California Journal
The Monthly Analysis of State Government and Politics
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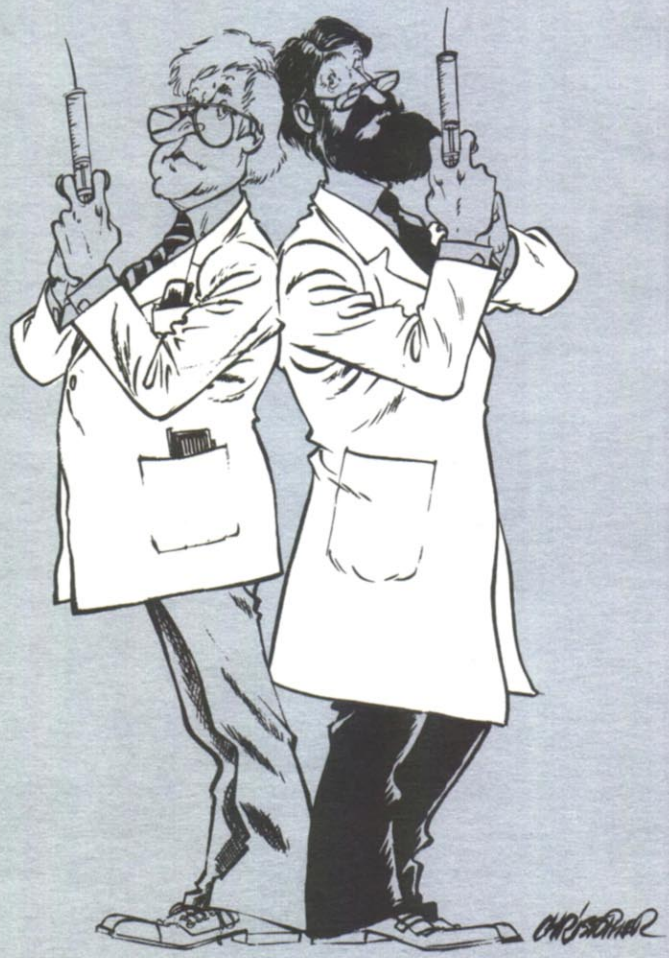

The dirtiest political campaign

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California Journal

The Monthly Analysis of State Government and Politics

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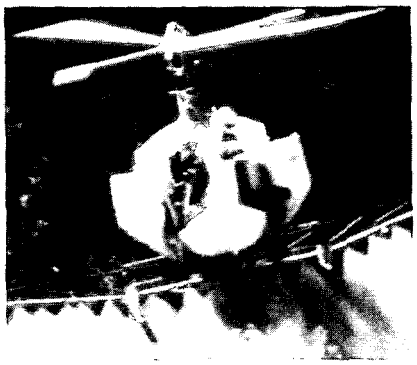

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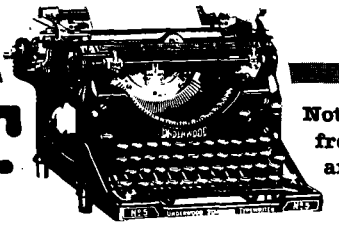
UP FRONT



Notes and Items from Contributors and the Journal Staff.

Chief Justice Rose Elizabeth Bird doesn't just survive opposition — she apparently thrives on it. In her half-dozen years on the state's highest court, Bird has weathered the stormiest confirmation in judicial history, an unprecedented investigation into the court's innermost processes and four recall attempts. She has also endured two operations for malignant tumors following removal of her right breast for cancer.

But at her annual address to the State Bar of California on September 11th, the chief justice looked slimmer, healthier, and more relaxed than at any time since she took office. Gone was the matronly figure in the nondescript polyester pantsuit, the schoolmarmish hairdo and the

little hair ribbons. Instead there was a slim, immaculately groomed, youthful-looking woman in a smart purple silk dress, classic gold jewelry, dark stockings and high heels. The transformation was so striking that lawyers — men and women — discussed her new look rather than her thoughtful remarks on the state of the judiciary.

Bird discussed her health with a reporter in a recent interview. "We get called a lot to ask if I'm dead or dying," she quipped. "I tell them maybe next week, but not this week."

(Carol Benfell, San Francisco)

How many California firms are producing hazardous waste? The EPA says 5000. State health officials use another counting system and say 10,000. Los Angeles County says it has 17,000 in its area alone. Anyone for 50,000?

(Joan Reiss, Sacramento)

When asked recently whether he thought former Governor Jerry Brown had a political future, political consultant David Mixner said he certainly did, then added:

"Jerry will flinch at this, but I think he may well become the Richard Nixon of the Democratic Party."

Mixner, a leader of political activists in the gay community and a long-time Brown supporter, explained that just as former President Nixon repeatedly had re-emerged from political exile within GOP circles, so would Brown pop up in Democratic circles.

Soundly defeated in his bid for a U.S. Senate seat last year, Brown recently has been studying political developments in Mexico, and Mixner opined that "nobody is better than Jerry Brown in analyzing and articulating" the leading edges of incoming political waves.

Just as Nixon has occasionally sought to reappear in U.S. foreign policy debates, Los Angeles-based Mixner said, so will Brown go through a period of "vanishing and then re-surfacing almost as if he feels a need to replenish himself" in public debate on current issues.

Despite Brown's will-o-the-wisp conduct since leaving office, the former governor retains strong backing from gays, Mixner said. "If there is such a thing as a political hero to the gay community, it surely has to be Jerry Brown."

Why?

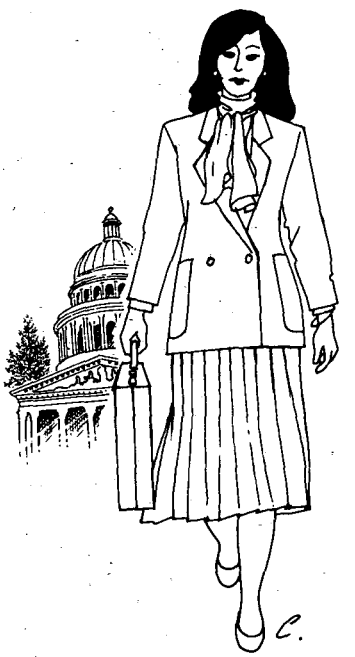
Because when he got elected, "he delivered on his promises."

(Dick Bergholz, Los Angeles)

We have a unique situation in this issue. We review two books, each of which has something to say about the editor of this magazine. Robert Fairbanks was a reporter in 1978 for the *Los Angeles Times* and was co-author of an election day story saying that the Supreme Court had delayed announcing a decision to overturn the "use-a-gun, go-to-prison" law. Both books deal with the subsequent investigation of the court, and one of them — *Framed* — has some nasty things to say about the story and about Fairbanks, which, of course, he disputes. Since we believed that the *Journal* had an obligation to review *Framed* nonetheless, we were pleased when Richard Thomson, chief counsel to the Senate Judiciary Committee, told us that the importance of *Framed* and the earlier book, *Judging Judges*, lay in their contrasting assessments of t court. Thus, his review treats the *Tim* story as incidental to the theme and it largely (whew) ignored.

As reported in our July issue, form state Senator John Briggs had be charged with firing warning shots a process server then swatting him in t face with a wad of rolled-up legal pape We can now report that, this past Septe ber, an El Dorado County jury fou Briggs innocent of battery. They de locked, however, on whether he was gui of brandishing a weapon. Briggs imme ately announced plans to sue the sher district attorney and three witnesses w testified against him.

We're taking a lot of heat for the ill tration that appeared with last mont article on women lobbyists. Reader D ise Graue, one of the more charitab called it "unfortunate." The trouble that the outfit on the pants-suited fem person is at least 20 to 25 years out style. Art Director Chris Van Overlo who drew the picture, says that his w is among those who have berated hi Below, he says, is what he should ha done.



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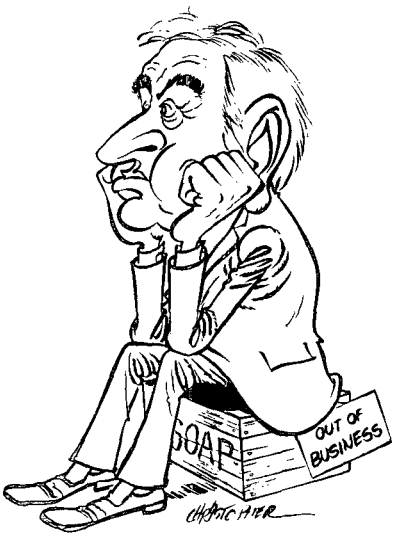

John Rousselot, a former Republican ongressman from Southern California, an't seem to win when it comes to re-pportionment schemes. Twice before — 1962 and 1982 — he was wiped out by edistricting plans. Rousselot, who ould like to return to the legislative rena, had planned to parlay Assembly-an Don Sebastiani's map-drawing skills nto another run for Congress. But when ne state Supreme Court vetoed Sebas-ani's initiative attempt this past Sep-ember, Rousselot was wiped out for a ird time. So, until that legislative op-ortunity comes 'round again, Rousselot 'ill have to be content with helping re-lect another California Republican — resident Ronald Reagan.

(Steve Pressman, Washington, D.C.)

Joe Cerrell, a California poobah in the orld of political consulting, is stretch-ng his knowledgeable tentacles to the ation's capital. Cerrell has teamed with en Palumbo, who's been around Wash-ngton for more than a decade, to open a ew lobbying and public affairs consult-ng firm on fashionable Dupont Circle. lients include Arco Chemicals, West-nghouse (the Clinch River breeder eactor) and the American Political oundation (a think tank). In California, errell is handling Ohio Senator John lenn's campaign for the Democratic residential nomination.

(Jim Carroll, Washington)

Norm Mineta, five-term Democratic ongressman from San Jose and a deputy hip in the Democratic leadership in the louse, is back on the job after recover-ng from the removal last August of a nalignant tumor in his lung. Mineta had ntered a Washington hospital for a rou-ine hernia operation when the tumor as discovered.

Bill Bagley, the governor's first appointee on the Public Utilities Commission, says he's dismayed by the PUC's "sterile" atmosphere and its unwillingness to set broad rules for the power companies, truckers and others that it regulates. "We operate on a case-by-case basis," Bagley complains. Instead, says the former GOP assemblyman, the commission should set "generic" rules and then let the bureaucrats carry them out. "I'm going to shake up the place a little bit," he says.

President David Gardner wants to make the University of California the best education system in the world. Perhaps he should start by giving a few dictionaries to UC-Berkeley's public information office. In an announcement on minority enrollments at Berkeley, they twice referred to "Pilipinos." According to Webster, however, "Pilipino" is the language spoken by "Filipinos."

In our October issue, we incorrectly identified San Jose State University as CSU — San Jose, a name the university has not used since 1972. We thank San Jose University graduate Vincent Montane for setting us straight.

The California Assembly Fellowship Program is now accepting applications. The program, which runs from August 1, 1984, through June 30, 1985, offers recent university graduates a chance to serve as aides to various lawmakers and Assembly committees. Applications are due by January 31, 1984. Those wishing further information should contact the program at 301 Kendall Hall, CSU-Chico, Chico, California 95929-0301.

Ellen Stern Harris, consumer activist and gadfly environmentalist, has turned her attention to cable television, contending that cable operators are not allowing sufficient public access to their channels. Formerly a coastal commissioner and a director of the Metropolitan Water District, Harris is editing a quarterly called "The Newsletter of The Public Access Producers Academy." Among other things, her September issue (the first) accuses the *Los Angeles Times,* whose parent corporation owns various cable properties, of not telling its readers enough about cable operator efforts to abolish equal time and fairness provisions. And to think, the *Times* once named her a "Woman of the Year."

For years, political reporters have been blaming William Knowland for jinxing the U.S. Senate seat now occupied by Pete Wilson. But it appears the late newspaper publisher and Republican political powerhouse has been getting a bum rap. Knowland, from Oakland, had held that Senate seat for more than 13 years, succeeding Hiram Johnson, who had held it for more than 28 years.

But ever since Knowland's attempt to improve his presidential possibilities by forcing a switch in offices with Governor Goodwin Knight cost the Republicans both posts in 1958, no one has been able to hold onto that Senate seat for more than one term. But such rapid turnover is not new. If the seat is jinxed, the blame should go to the first occupant — the star-crossed explorer-soldier-politician John C. Fremont.

After California came into the Union in 1850, its first U.S. senators were Fremont and William M. Gwin, a one-time Mississippi congressman who had served on California's constitutional convention. But Fremont abandoned his seat in six months to pursue other interests, including a run in 1856 as the first Republican presidential candidate. Gwin, on the other hand, stayed to serve two terms in the Senate before leaving to fight for the South in the Civil War. The sharply differing performances by Fremont and Gwin set the pattern. Counting Wilson, the Fremont seat has changed hands 26 times, including one man who served two interrupted terms.

Gwin's seat, however, has turned over only 15 times counting the current occupant, third-term Senator Alan Cranston. Knowland, always the conservative, merely restored an old tradition.

(Otto Kreisher, Washington)

LA Congressman Tony Beilenson is heading a house task force that is supposed to recommend improvements for handling of the federal budget. Beilenson broke into the budget business as chairman of the Senate Finance Committee, back when he was in the Legislature.

Come across a blurb lately that's nosy, newsy or smart-alecky about California government, politics or politicians? Share it with the Journal. *We pay up to $25 for entertaining tidbits published in "Up Front," so rush your items to Up Front, 1714 Capitol Avenue, Sacramento 95814.*

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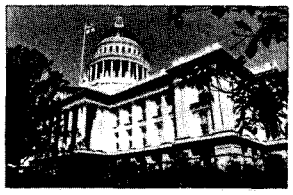

Capitol review

October 14, 1983

Now that Governor Deukmejian has finished his first legislative session and has been in office for nearly a year, the question is: How's he doing? And the consensus around the Capitol seems to be that he's doing well. He got much of what he wanted from the Democrat-dominated Legislature; he pretty much kept his campaign promise not to raise taxes; and he is perceived generally as a decent sort of fellow who can be stubborn in defense of what he believes. His problem continues to be a shortage of star-quality, or charisma, or emotional fire or whatever it is that will make heads turn and people interested in who you are and what you say. Without it, leadership — not to mention political success — can be difficult. However, Deukmejian staffers are well aware of the problem and believe that it results largely from the fact that most Californians simply don't know their governor well enough yet. To that end, he's been moving about the state quite a bit lately, laying out his ideas and plans. In San Jose two days ago, the governor was presented with a bicycle and surprised everyone by hopping aboard and taking a few turns. When assessing things, the staffers are optimistic. "This guy has three years before he faces election," noted one.

Honig in '86?

Incidentally, when wondering who might be their Democratic rival in 1986, the Deukmejian people clearly include Bill Honig, California's highly visible superintendent of public instruction. Honig is currently riding the crest of educational reform, the movement that produced the big school bill last July. The Deukmejian types like it remembered that the governor also had a major role in the measure's passage.

The Legislature finally adjourned the first half of its 1983-1984 session on September 19th, leaving behind an unsettled fight over community college funding. Deukmejian had agreed to provide an extra $108.5 million for the schools, provided the Legislature would approve a first-ever $50-per-semester tuition fee for full-time students. Although the Senate went along, as did many community college officials, Democrats in the Assembly refused, and the session ended with the colleges getting neither the appropriation nor the fee revenue. There have been many recriminations since: against the governor, against Assembly Speaker Willie Brown and against the colleges themselves for not making their own position clear. The entire issue surely will reappear when lawmakers return in January.

In retrospect, Deukmejian's biggest victory during the recent session came last February when — with help from Assembly Speaker Brown — the Legislature accepted his rollover plan to handle the $1.5 billion deficit from the previous fiscal year. If the compromise financing bill had failed to pass and the State of California had run out of money to pay its bills, the subsequent fiscal chaos might well have ruined his political career. Although the plan was generally opposed by the most liberal of Democrats and the most conservative of Republicans, enough lawmakers in between agreed that fiscal calamity was too high a price to pay for the ideological purity their colleagues were demanding.

Hands-off approach

One of the best ways for a governor — any governor — to avoid a bit of responsibility is to let a bill become law without his signature. The measure goes on the books, but his fingerprints aren't all over it. According to the governor's office, Deukmejian used the device 26 times this year (out of 1465 bills that came before him) including one use that has angered a few members of the law enforcement community. The bill in question immunizes many California farmers, garbage haulers and trucking firms from pending prosecutions for having run overweight trucks on streets and highways — a violation that seriously damages roads and costs taxpayers millions of dollars annually.

Essentially, the bill prevents local district attorneys from using weighmaster records against the truckers until after January 1, 1984. Since many pending prosecutions are based on current records, the bill could destroy these cases and thus reduce a chance to collect fines totalling millions of dollars. The Attorney General's Office and the California District Attorneys Association sought a veto. But trucking interests, including contributors to Deukmejian's campaign, lobbied against them. Later, to explain the governor's response, his office said he had misgivings about the bill but felt it clarified this section of law.

Steve White, of the district attorneys' group, was particularly angry at the outcome and says there is no good legal reason to make the weighmaster evidence inadmissible in court. "It's just like the Legislature said all testimony taken before 10 a.m. on a Tuesday is inadmissible," he says.

The author of the bill is Democratic Assemblyman Bruce Young of Cerritos, who has been in the news recently for another reason. On September 16th, the Fair Political Practices Commission announced that it had fined him $13,000 (the biggest ever for an elected official) for not disclosing his role in the mailing of several political "hit pieces" against local government candidates.

Robert Fairbanks

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The golden anniversary of California's dirtiest political war

By JOHN McFARLAND

Recent elections have produced a rash of so-called negative campaigns, efforts to shred the reputation of an opponent rather than promote the virtues of oneself. As a result, many believe that today's mudslinging is unprecedented in California's political history.

Not so. We are approaching the 50th anniversary of a campaign whose participants might have taught a few things to the political managers of today. It was Upton Sinclair's try for the governorship as a Democrat in 1934 and — primarily because of his opponents — it stands as the harshest and most negative gubernatorial race in the state's history.

By the time he ran for governor at age 55, Upton Sinclair was already a Thirties version of a media star. A wealthy novelist, author of more than 40 books, he was — and is — best known for his 1906 work *The Jungle*, an exposé of substandard (even subhuman) working and sanitary conditions in Chicago's meat-packing industry. He had also dabbled in California politics — as a Socialist candidate for Congress and for governor.

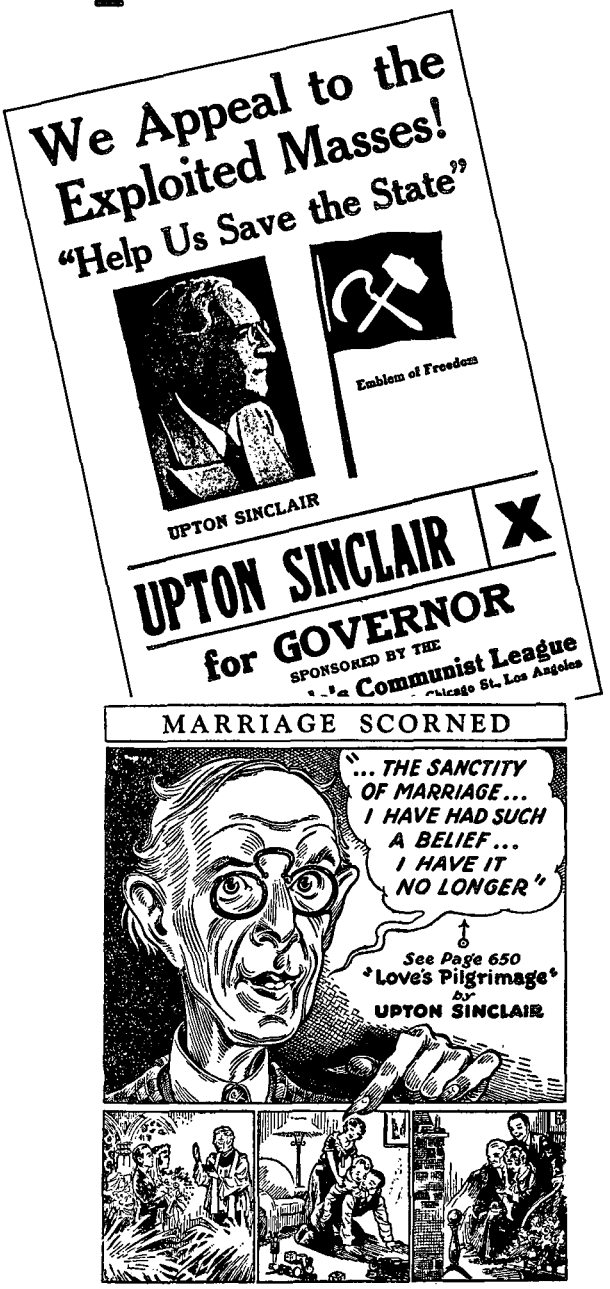
But in 1934, as the Great Depression was spreading unemployment and poverty across the nation, Sinclair captured the Democratic nomination for governor. Suddenly, his plan to "End Poverty in California" (EPIC) was a real possibility for the state. To his opponents, it was Bolshevism, to be achieved through confiscatory taxes, and many were genuinely afraid. They saw not only that Sinclair had the Democratic nomination, but that Republicans were in disarray.

A Republican monopoly

When the Depression hit, California Republicans seemed on the verge of a permanent monopoly of the state's political power. During the previous decade, they had whipped Democrats in 530 of 555 elections in California. As late as November 1930, when Democrats won control of the Congress for the first time in 10 years, the Democratic gubernatorial candidate received a meager 24 percent of the vote against Republican "Sunny Jim" Rolph. (Sinclair, the Socialist candidate in 1930, garnered but 4 percent.)

But Republican domination dissolved in the acids of the Depression. In 1932, Franklin Roosevelt revived Democrats by sweeping 55 of the state's 58 counties and carrying into office a Democratic majority of the California congressional delegation and a new Democratic senator — William McAdoo.

Meanwhile Republicans, led by Governor Rolph, were faced with a state spending deficit. To deal with it, Rolph — who rejected the idea of a state income tax — favored a state sales tax (2.5 percent) on all retail purchases — including food. Once enacted, that tax put the greatest burden on the state's half-million unemployed workers. This



kind of blindness to the misery and hardship caused by the Depression, coupled with the growing power of Democrats nationwide, did not bode well for the GOP.

Nor did Rolph's sudden death in June 1934 brighten GOP prospects. Lieutenant Governor Frank Merriam (who became acting governor upon Rolph's death) secured the Republican nomination for the 1934 election by refusing to move against striking San Francisco longshoremen until revolution-jittery business leaders backed his candidacy. Soon after Merriam sent the state militia in to break up that strike, Crocker Bank contributed $50,000 to his cam-

John McFarland, from Sacramento, teaches history at Sierra College.

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paign war chest. Still, he got only 44 percent of the vote in winning his party's primary, a bitter contest that saw one of the candidates, Raymond Haight, bolt the GOP. Haight announced plans to run as a progressive in the general election.

The Republicans could ill afford this split; the Depression had transformed California from a GOP stronghold into a state with a 57 percent Democratic registration.

Enter Sinclair

To compound Republican miseries, the Democrats nominated the dynamic Sinclair.

The novelist's writing skill had drawn Sinclair into the Democratic fold after abortive tries for Congress and the governorship as a Socialist. In late 1933 he published a 64-page pamphlet called "I, Governor of California and How I Ended Poverty." For a people made desperate by the widening Depression, Sinclair's simple program was a promise of relief. Based on the idea of "production for use," the idea had already won support for Technocracy, another idea that seemed to solve the great riddle of the age: how a nation with empty factories and unplanted farms could eliminate the problems of unemployment and hunger.

EPIC proposed to establish two state authorities — one to rent unused farmland; the other, abandoned factories. Unemployed agricultural and industrial workers would then be hired to work the revitalized plants and farms. Until the authorities became self-supporting, the state would pay for them by shifting the tax burden onto corporations and individuals with personal income over $5000. The latter tax rate would be graduated steeply to a top of 30 percent on those who earned more than $50,000. Revenues thus gained would, Sinclair contended, even permit the state to abandon its unpopular sales tax — and property taxes on homes and farms worth less than $3000.

The promise of EPIC led to a Sinclair landslide within the Democratic Party. He not only captured the nomination, but his running mate, Sheridan Downey, and 32 candidates for the state Assembly ran on the EPIC platform. In September, another EPIC loyalist, Culbert Olsen, won election as party chairman. And although it spoke for the entire party, Sinclair's organization only publicized candidates who endorsed EPIC.

A stationary target

But the detailed plan of EPIC, so convincing in the primaries, proved a stationary target once the regular campaign got under way.

That campaign is best remembered today for the contribution Hollywood made to defeat Sinclair. Metro-Goldwyn-Mayer produced and distributed free of charge a series of pseudo-newsreels featuring bit actors done up as voters. One such "commercial" showed a grandmotherly type who explained that she supported Merriam because "I want to save my little home. It is all I have left in the world." An actor portraying a hobo voiced support for EPIC while picking his nose.

Sinclair's foes also took to the radio. Sinclair himself, constricted by lack of funds, made limited use of the medium while his opponents made regular attacks on both him and his program. An organization known as "The Constitution Society" sponsored nightly commentaries. In one, an elderly man told Los Angelenos how Upton Sinclair picked his pocket during a political meeting. Radio preachers like the Reverend Martin Luther "Spouting" Thomas regularly prophesied on the future of California under "godless socialism."

But the real damage to Sinclair was done through the state's newspapers. William Randolph Hearst, a former Democrat, placed his five California papers squarely behind Merriam. The three *Bees* of the McClatchy chain so strongly supported third-party candidate Haight that he polled one-third of the votes cast in Yuba and Sacramento counties and actually carried Fresno, Tulare and Stanislaus counties. The ultra-conservative Chandler family published boxed, anti-Sinclair articles on the front page of the *Los Angeles Times* every day for two months preceeding the election. Only one county weekly supported Sinclair.

Sinclair replied with an eight-page weekly, *EPIC News*. After an early campaign press run of 20,000, the *News* gradually built up to a run of over two million by mid-October. But it did little to offset the grinding volume of information and propaganda spilled out in opposition to Sinclair and his policies. His writings were culled in detail for ammunition.

Leaflets distributed on Sunday to church-goers quoted him on the Catholic and Mormon Churches, and on Mary Baker Eddy, whom he once called "the price we pay for failing to educate our farmers' daughters." Some handouts confused him with Sinclair Lewis, the anti-clerical author of *Elmer Gantry*. And, despite his strong anti-Communist

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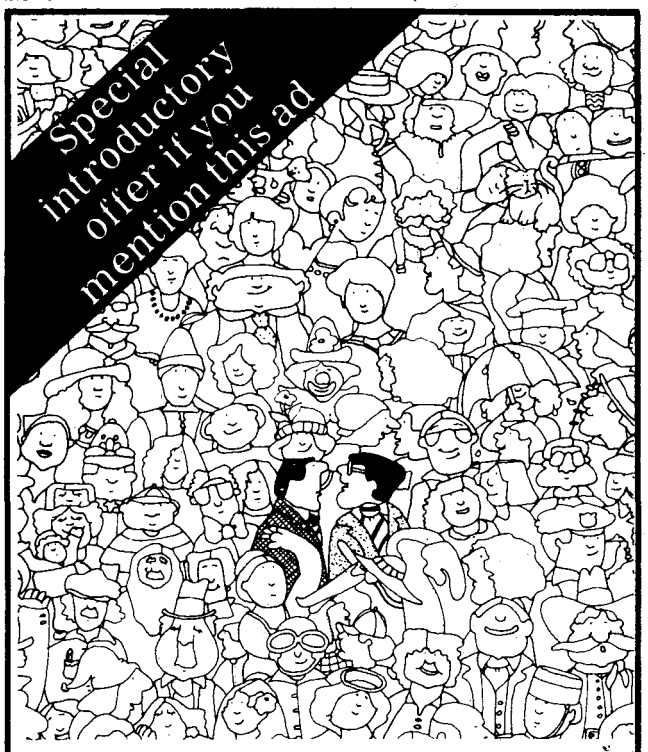

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VOTERS

Regardless of party registration, any registered voter may cast his ballot for Frank F. Merriam, at the polls on November 6th.

Sinclair must be repudiated for the good of California and the Nation.

Save Our State News

SOS

A CALIFORNIA PAPER FOR AMERICANS

Straight Ahead!!

October, 1934

LOS ANGELES, CALIFORNIA

Vol. 1—No. 1.

SINCLAIR EXPOSED

CALIFORNIA REAL ESTATE ASSN.

GOVERNOR

Photographed below is Governor Frank F. Merriam, who is running for election, with Up-

COMMUNISTS WANT SINCLAIR ELECTED

FOE OF REDS

Pictured below is Ole Hanson, president of the Save Our State League, and former mayor of Seattle, who during the war-time general strike in the [illegible] literally ran the

Ole Hanson Comes Out Strong Against Sinclair

Last say, "As Advertised in Shopping Guide" $

PAGE SIX FRESNO SHOPPING GUIDE, FRIDAY, OCTOBER 26, 1934

YOUR BABY AND MINE

Our Children deserve the same LIBERTY and OPPORTUNITY WE HAD

FIGHT the MENACE of SINCLAIRISM

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credentials, he was commonly pictured as a Bolshevik. In the closing days of the campaign, evangelist Amiee Semple MacPherson staged a pageant in which Communists, led by Sinclair, pulled down "the pillars of the American Constitution."

The most damaging claim, however, was that EPIC posed an economic threat to the state's wage earners. Opponents cried that it would draw hobos to the state to compete for jobs and to live off the taxpayer. The charge was sometimes overdone, as when a Los Angeles *Herald-Express* photo (purportedly of drifters lounging in Arizona in hopes of a Sinclair victory) was exposed as a still from a Frankie Darrow movie. In the same vein, the firm of Lord and Taylor hired ragged men to walk city streets carrying Sinclair signs.

Another claim charged that EPIC taxes would bankrupt or drive off business. That fear was generated especially in the movie industry, and industry workers were taxed a day's wages to fight Sinclair. Should Sinclair win, workers were told, the entire movie industry would bolt for Florida. Little publicity was given when some of Hollywood's most illustrious residents, including James Cagney and Jean Harlow, boycotted the "tax."

Little of this involved Merriam. His managers considered the acting governor so dull they didn't schedule him for a major speech until three weeks before the election. An editorial summed up the feeling: "Hold your nose and vote for Merriam."

Still, Merriam recognized the liabilities of his conservative image. He alarmed his supporters by praising Dr. Francis Townsend's plan to give $200 a month to the elderly, though it was of no future cost to Merriam since the plan required federal enactment. He also lent support to a work-sharing proposal, the 30-hour week. And, in a secret deal with FDR's political managers, he secured the president's silence on EPIC in return for a promise not to impede the New Deal in California.

But it was the negative media campaign that elected Merriam, by a margin of 48.9 percent to 37.8 percent for Sinclair, with slightly more than 13 percent for Haight.

Despite Merriam's victory, the election foreshadowed a long period of Republican decline in the state. The EPIC campaign built Democratic registration to 57.8 percent of the electorate — a figure that remained stable for a quarter of a century. In 1960 it stood at 57.5 percent.

EPIC supporters subsequently affected state politics for years to come. In 1938 Culbert Olson became the state's first Democratic governor of the Twentieth Century. That same election sent two other EPIC veterans to Washington: Jerry Voorhis, whose writing established him as one of the most articulate New Deal congressmen, and Sheridan Downey, who began the first of two full terms in the Senate.

Voorhis, of course, is remembered as the victim of Richard Nixon's first congressional election in 1946. Less frequently remembered is the fact that it was Downey's seat, vacated in 1950, that became the prize in the most famous senatorial race in California history: Richard Nixon against the woman he labeled "the pink lady," Helen Gahagan Douglas. But even the vituperation of that lively contest pales before the EPIC campaign of 1934.

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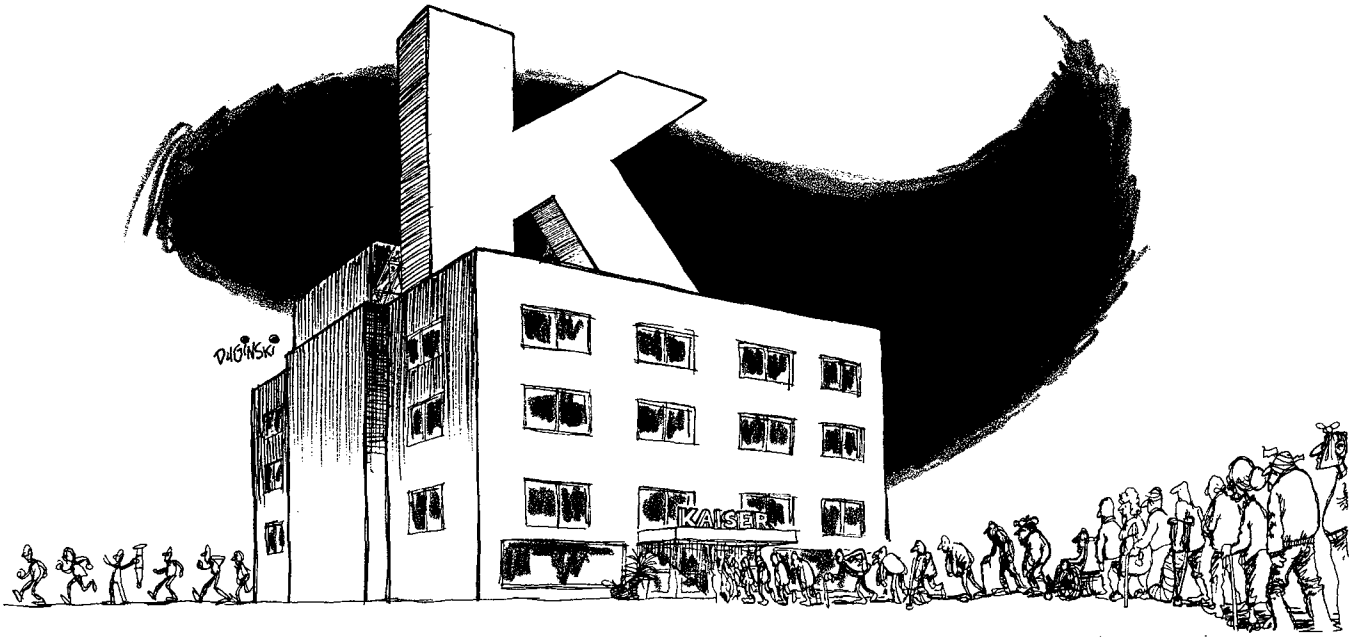
Skyrocketing medical costs bring Kaiser to the fore



By GLADWIN HILL

Anyone who's had an ailment lately, or even been reading the newspapers, must be keenly aware that medical care is in the throes of a revolution. The family doctor, the backbone of the nation's medical system for two centuries, has all but disappeared into the Norman Rockwell picture-gallery — superseded by specialists and group practitioners who don't make house calls.

Hospitals, once benign and folksy community fixtures like churches, are in rapid transition into formidable mechanized commercial entities, often owned by faceless, faraway corporations and more impersonal than a Midas muffler shop.

Costs of medical treatment have long since skyrocketed light-years beyond the day when they were a minor item in family exchequers. The national outlay on health care has tripled in the last ten years to $362 billion — some $1600, on average, for each person in the country, over $6000 for a family of four. Only about one quarter of this $362 billion is people's direct payments for medical care. But the rest comes from them via government and insurance companies.

The causes of this cost explosion are many — inflation, broadened medical care, remarkable advances involving expensive technology, a wave of malpractice litigation that has pushed doctors' insurance costs up toward the level of their annual incomes.

But perhaps the biggest element in soaring costs has been the fact that the system simply encouraged them. Traditional medical care is delivered on a fee-for-service basis. Under it, the doctor not only sets the fee for each service rendered but tells the patient how much service the patient needs. Since patients rarely argue and since government regulations are minimal, there are few limits on doctor fees, hospital charges and all the other elements of health care costs. Hence, the dominant trend is ever upward, toward a breaking point which many feel is close.

A bright ray

In this fearsome picture of looming national medical insolvency, one of the brightest rays has been a 50-year-old, steadily growing concept called the Health Maintenance Organization or HMO. (It has also been known as pre-paid health plans.)

An HMO is a medical service that does not charge what the traffic will bear for specific treatments and instead offers full medical care for a fixed monthly fee. It does this by employing its own doctors, operating its own hospital facilities, and serving primarily groups of people, such as employees of companies, whose good and bad health averages out to a manageable level. Having gotten its money up front, an HMO's dominant incentive obviously is to keep medical care costs down.

Millions of people now get their medical care in this economical way. HMO's have proliferated — the pattern has been adopted on a growing scale by groups of private-practice doctors and even staid insurance companies — and although about half the people in the country still are in areas without HMOs, the HMO system is looking more and more like a major answer to the nation's medical-cost crunch.

The preeminent HMO — the largest private direct-payment medical care provider in the world — is a California-

Gladwin Hill, former Los Angeles bureau chief for the New York Times, *is a free-lance writer in Los Angeles.*

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born, Oakland-based institution — the Kaiser-Permanente Medical Care Program.

It began almost accidentally. In the 1930's, when the Colorado River Aqueduct was being built across the desert to bring water to Los Angeles, a young doctor named Sidney R. Garfield hopefully set up business along the route with the idea of meeting the medical needs of the thousands of construction workers. But instead of coming to his clinic, medical problems gravitated to distant established communities in the old pattern.

Garfield thought he could provide better service. So in collaboration with one of the insurance companies involved, he worked out a plan under which the construction companies paid him five cents a day per worker to deal with all the project's medical needs; for an additional nickel, a worker could get non-occupational medical service also.

The plan worked so well that the Henry Kaiser engineering concern had him set up an expanded program in 1938 during the building of Grand Coulee Dam in Washington. Then came World War II and a further-enlarged program to cover Kaiser's 200,000 steel and shipyard workers and their families.

When the war ended, many participants urged that the program be continued. So it was shifted into peacetime gear. By 1949 it had 100,000 voluntary subscribers.

Today the Kaiser program has 4.3 million "members" (subscribers) in nine states, from Connecticut to Hawaii — about three-quarters of them in California. In northern California, one person in four belongs. Kaiser's membership is more than one-third of the 11.6 million people enrolled in HMOs nationally.

The Kaiser program employs 4400 doctors and 33,000 other employees, and operates some 30 hospitals and numerous related facilities. The average charge for the service is about $48 per month, which experts put at anywhere from 10 to 40 percent less than typical medical insurance plans. The charge covers total medical service. In the exceptional circumstance of a malady beyond the scope of available Kaiser doctors and facilities, the patient is sent to a specialist or special facility and Kaiser picks up the bill.

Quality or Quantity?

Dr. Garfield did not invent the HMO system. His desert scheme had two precursors: a community program in Elk City, Oklahoma, and the Ross-Loos Medical Group in Los Angeles. But Garfield's wartime work gave vital impetus to the HMO concept, which was bucking tremendous obstacles.

The medical establishment considered the HMO system — and still does to some degree — heretical. For one thing, it violated the old canon against soliciting patients and advertising services. It flew in the face of traditional doctor-patient relationships. The chief procedural difference between HMOs and conventional private practice is that the HMO patient generally foregoes choice of doctors. With round-the-clock service guaranteed, patients have to accept the practitioner on duty at the moment, or wait perhaps days or weeks for a special appointment.

Other generic differences are more arguable — and continue to be argued. Can the competence level of flat-salary doctors be as high as that of private practitioners, whose income depends at least in theory on the quality of their work? And isn't it in the interest of HMOs, once having gotten subscribers' money, to give them as short shrift as possible when they want service?

HMO supporters reply that HMOs can get good doctors because they have a lot to offer them. HMO doctors work regular hours, have an assured income and immediate access to a complete array of equipment, facilities and collaborators and to patients' complete medical records. Many doctors are glad to escape the burdens of private practice — big investments in facilities, unlimited hours, the administrative headaches of running an office, the nuisance of dealing with ancillary services like laboratories, the staggering load of malpractice insurance.

In northern California, Kaiser internists start at $54,600, orthopedic surgeons at $78,000 — compensation that may double after ten years' service.

The question of HMOs having a built-in tendency to supply minimal service is one that may never be entirely dispelled because in any area of medicine there will always be dissatisfied patients, slip-ups and second-guessing.

Production quotas

Many Kaiser doctors have patients scheduled at 15-minute intervals for initial interviews, and some former staff members have complained about this production-quota pressure. But private-practice doctors necessarily work on self-imposed schedules that often come close to the same rate.

Obviously under a fixed-fee system, the more expeditiously a patient's problem can be dealt with, the less a given transaction is going to cost the service organization. But there is a countervailing pressure for superior ministration in that any failure to deal with a patient's problem thoroughly may allow complications that run up costs.

There has been a succession of intensive inquiries by professional, governmental and academic bodies into the quality of HMO care — with Kaiser inevitably a major focus — and the consistent finding has been that it is equal or superior to that produced by other medical modes.

In addition to such professional assessments, other surveys have indicated that HMO subscribers themselves express a higher ratio of satisfaction with their treatment than some groups of non-HMO patients.

The bottom line seems to have been aptly summarized by Harold Luft, a professor of health economics at the University of California at San Francisco and himself a Kaiser member for ten years, in a recent interview.

"I think it's a case of doing your shopping at Sears rather than at Bloomingdale's," he said. "You're not going to get stuck at Sears with shoddy merchandise. On the other hand, you're not going to get designer labels and people waiting on you hand-and-foot."

The demonstrated quality of HMO service was sufficient to induce Congress in 1973 to put the weight of the federal government behind HMO development as one remedy for the medical-cost crisis. A law was enacted establishing criteria for HMO service and providing for grants and loans to help HMOs start up. Under it, some $150 million has been distributed, and there are now some 270 HMOs operating across the country.

The Santa Clara stories

Last year the *San Jose Mercury-News*, in response to reports of poor medical service, made an exhaustive investigation of the Kaiser-Permanente unit in Santa Clara County. The result was a series of three articles by the paper's medical writer, Bob Goligoski, saying that Kaiser was sued far oftener for malpractice than non-Kaiser doctors, and paid almost twice as much on average in settlements. The articles included a number of horror stories of patients whose ailments had been misdiagnosed or who had received inadequate treatment.

The latter was not entirely surprising. Most medical facilities have more horror stories than they would like simply because their human operators make mistakes. But the Kaiser Foundation Health Plan, Inc., emphatically contra-

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dicted the paper's conclusions, saying they were based on statistical confusion. Kaiser claimed:

"The newspaper took our total malpractice record (number of claims and dollars spent) for physicians, other professional staff, non-professional staff, hospitals, pharmacies, and other components of our comprehensive health program. They then graphically compared it with the record of fee-for-service physicians only without including hospital and other health care provider claims. This is like comparing apples with oranges."

The newspaper itself concluded in an editorial that Kaiser provided relatively inexpensive medical care "by seeing more patients for less time, by ordering fewer tests and by opting less often for elective surgery. On rare occasions this mix produces tragedy. Most of the time, fortunately, it produces true economy with little degradation of care."

Kaiser cites as clinching evidence of the quality of its service the fact that unlike many if not most medical providers it is able to operate without malpractice insurance, handling all claims itself at a cost considerably less than outside coverage would be.

The Kaiser program (which is not connected with Kaiser industrial activities) has three divisions — the Kaiser Foundation Health Plan, Inc., the Kaiser Foundation Hospitals and the Permanente Medical Groups of six regional units comprising the 4400 doctors in the system. (Permanente was an early Kaiser industrial operation whose name got into the system and has remained, with no particular significance.)

The Health Plan and Hospital divisions operate as non-profit corporations, with a combined annual budget of around $2.5 billion. "About 97.5 cents of every dollar in revenues generated by these organizations are applied directly to the provision of health-care services," Kaiser officials say, adding that from the beginning only a minute portion of the system's money has come from any sort of government grants.

The doctor "medical groups" in effect are commercial corporations in which the doctors, after three years' service, become stockholders. Each medical group is paid by the Health Plan in two ways. First, it receives a flat fee for each subscriber in its region. Second, it receives a year-end bonus whose size depends on the region's overall financial performance for the year.

In other words, the medical groups are "at risk." If their patients require more treatment than expected, the groups must pay for it from their flat-fee allowance. And if the region runs up a series of unexpected operating costs, their bonuses suffer. "This combination of physicians' incentives and responsibilities makes it possible for Kaiser-Permanente to provide medical care on a more cost-effective basis," Kaiser officials say.

From bitterly opposing HMOs, organized medicine, as represented by the American Medical Association and its regional branches, has swung around to acknowledge that HMOs are legitimate and have a constructive place in a multiplex system of medical services.

When Congress enacted the HMO assistance law in 1973 there were bright hopes that HMO memberships might grow to 50 million people by now. The actual total is less than one-fourth that. This has been due in part to the great expansion of medical insurance plans, which provide a good measure of financial protection within the framework of the old see-your-doctor system; and in part to the fact that it isn't easy to replicate a Kaiser, even on a small scale.

The initial investment requirements — to provide hospital beds, set up clinics and retain physicians — are immense, and many HMOs have gone broke while waiting for the arrival of enough patients to pay for it all.

However, as health care costs continue to rise and the market for HMO services continues to broaden, more and more firms with substantial resources are entering the field. Here in California, for instance, CIGNA Healthplans, a subsidiary of the CIGNA Insurance Company, has purchased the Ross-Loos Medical Group in Los Angeles and other HMOs to form an organization that has 350,000 California members. (Kaiser remains the giant with 3.5 million members in the state.)

Kaiser on its part has been taking steps to overcome some of the common complaints about the HMO system. It has been expanding its network of clinic facilities to put services within easier reach of subscribers than its major hospital centers. It recently laid out $49 million for improved telephone service. It has encouraged patients' forming close relationships with staff doctors of their choice, and says 60 percent of the members now have such ties.

No one, including Kaiser, thinks that the HMO format is the total answer to the nation's medical problems. There will always be a demand for individualized service and always will be doctors who prefer to practice that way.

It's not possible to predict the potential of HMOs for replacing traditional medical patterns. But it looks as if, when the dust of the current economic and structural turmoil in medical care subsides, the nation will settle down to a mixed system, as in the merchandising of other commodities, in which HMOs will have a far bigger role than now.

And Big K, the pioneer of large-scale HMO operation, seems likely to be in the forefront.

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Medi-Cal reforms bring competition to the health-care field

By ROBERT FAIRBANKS

Most Californians probably don't realize it, but they are about to see significant reductions in the cost of health care. Competition is entering the medical market place in a big way, forcing hospitals and doctors to adjust their prices accordingly. For instance, the State of California, which buys health care for about 2.8 million poor persons, has just trimmed its hospital bill by more than $200 million a year, a savings of 11 percent. In the private sector, Blue Cross is offering a new plan that cuts previous rates by 15 percent. Even Kaiser and other HMOs, whose rates are already relatively low, cannot escape the new competitive pressures and eventually must respond.

The immediate reason for all this is the health care reform package that the Legislature approved and former Governor Edmund G. Brown Jr. signed last year. Designed primarily to cut the cost of Medi-Cal — the big state program that finances health care for the poor — the package removed legal barriers that had been preventing competition in the health-care field. Because the package did not go into full effect until last July, its major provisions are just beginning to be felt.

Moreover, the Legislature is at it again. A new reform plan would generate additional competition by requiring doctors and hospitals to bid for about half the state's $4 billion-a-year worth of Medi-Cal business. The new proposal moved through the Assembly earlier this year but got stuck in the Senate as the 1983 session was coming to a close. However, key participants expect to see final action in 1984.

Prior to last year's reform, so called "freedom-of-choice" laws blocked most price competition in the health-care business. Under these provisions, neither private insurors nor government agencies could restrict a patient's right to use the doctor or hospital of his or her choice. In practice, this meant that private insurance companies could not sell group health plans that required patients to use doctors and hospitals that charged lower rates. Similarly, state agencies could not require welfare recipients and other poor persons covered by the Medi-Cal program to use less-costly providers.

Of course, a worker or recipient could join an HMO if he or she wished, but no one could force him or her to do so. In any case, as health insurance and government programs became ever more comprehensive, covering more and more of health-care costs, patients lost whatever reason they might have had to shop for less-expensive treatments. As a result, price competition virtually ceased to exist and the cost of health care soared.

But everything changed dramatically in California last year because of the Medi-Cal reform. At the request of lobbyists Lewis Keller (Association of California Life Insurance Companies) and Emery Dowell (Blue Cross), lawmakers overrode strong opposition from the California Medical Association and the California Hospital Association and repealed the freedom-of-choice laws covering private health insurance. Among other things, the lobbyists argued that the state freedom-of-choice law had already been undercut somewhat by various provisions of the federal government's pension protection act (ERISA) of 1975. Over much the same opposition, the reform also abolished freedom of choice in the Medi-Cal program, but only for hospitals. (Since Medi-Cal is a joint federal-state program, the state statute needed a waiver from federal freedom-of-choice rules. The federal Department of Health and Human Services granted it in September 1982.)

The defeat of powerful doctor and hospital lobbies seemed surprising at the time, but lawmakers indicated later that they had no choice. "Peer review" among physicians and voluntary controls on hospital rates were not stopping the continuous, radical rise in health-care costs. Unwilling to stop the rise through full-blown state regulation of rates and charges, the Legislature turned to price competition, the classic control in a free-market system.

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Also, the Legislature's Democratic majority, along with Governor Jerry Brown, wanted to avoid a tax increase just before the elections of 1982 and therefore was looking for ways to cut state spending. Medi-Cal, which cost $2 billion annually in state funds and another $2 billion in federal money, was their biggest target. (In addition to allowing competition, the reform package reduced Medi-Cal services, withheld provider rate increases and transferred some 300,000 poor persons from Medi-Cal rolls to county care.)

In the private sector, Blue Cross has been firstest and mostest under the new law. With some four million members, the non-profit organization is offering a new program (effective November 1st) that grants a 15 percent rate reduction to group plan subscribers who agree to use doctors and hospitals of Blue Cross' choice. These doctors and hospitals — known as "preferred providers" — have contracted with Blue Cross to provide care at relatively low rates.

Leona Butler, director of provider contracting for Blue Cross, says 110 hospitals and some 7000 doctors are under contract for the Blue Cross "prudent buyer" program. Under a standard program, in which the group member maintains freedom of choice, typical coverage for a family of four costs $248 a month, Butler says. (That's "first-dollar" coverage for all doctor and hospital bills; no co-payments, no deductibles.) Under "prudent buyer," she says, the cost is $211 a month.

The new Blue Cross program is much like Kaiser and other HMO's because group members lose the right to visit whatever doctor they wish. However, Butler says the new program is more flexible than an HMO. If, for instance, a mother wishes to take her child to a pediatrician who is not under contract to Blue Cross, she may do so. However, the pediatrician would not be reimbursed by Blue Cross at his or her usual rate and the mother would have to make up the difference. For those who want the maximum savings, Blue Cross also operates a pair of HMOs, one in Northern California, the other in the south. HMO coverage for the same family of four costs $201 a month, Butler says.

Hospital costs

Meanwhile, back at Medi-Cal, the reform law was being used to cut hospital costs, which accounted for about 45 percent of all Medi-Cal spending. The key provision was one that established the Governor's Office of Health Care Negotiations, a unit empowered to contract with California hospitals to provide service for Medi-Cal recipients. Since recipients would be required to use the hospitals that won the contracts, the chief negotiator in effect was putting about $1.5 billion worth of Medi-Cal hospital business out to bid.

The chief negotiator, soon dubbed the Medi-Cal "czar," was William A. Guy, former president of Blue Cross of Southern California. A straight-forward, outspoken man, Guy agreed to take the job for one year to get the contract people started. At the end of his term last June, Guy reported that he had negotiated separate contracts with some 150 hospitals, had reduced Medi-Cal's hospital costs by about $200 million annually and believed that another $200 million could be saved. "I just got hold of a can of worms and squeezed, and $200 million fell out of the bottom. I think that much more could be saved by creating additional hospital competition," he said at the time.

Guy's most controversial action required hospitals to establish a flat daily charge for each patient — regardless of whether the patient was in for a tonsillectomy or a triple bypass — and submit it as a bid. Before, hospitals had billed the state for whatever services they rendered, and each had its own schedule of charges. By forcing each hospital to analyze its own expenses and caseload and then set a daily charge that would cover all, Guy created a system that makes comparison shopping easy. Also, the system forces hospitals to take the loss if patient care costs more than they had expected.

Some critics feared that the new system, by requiring Medi-Cal patients to use only contract hospitals in each area, might deny them access to proper care. However, an independent study of the 1982 reform has found no evidence of access problems. The study, funded by the John A. Hartford Foundation and sponsored by the National Governors' Association, is to run for two years. After looking at the first year's series of contracts, co-director Lucy Johns sees "a reasonable prospect of the state saving lots of money."

But the czar was a temporary phenomenon. Under last year's reform bill, his duties were picked up on July 1st of this year by the California Medical Assistance Commission, a nine-member panel that is now responsible for hospital contracting. But the commission is also at the center of a big dispute involving a new legislative effort to extend competition in the health-care field.

Old reforms

Essentially, the new effort would require that virtually all Medi-Cal services go out to bid, not just hospitals alone. However, the contracts would not be parceled out separately to doctors, hospitals and other providers. Within each geographic area, a group, or groups, of doctors, hospitals and others would be organized to submit a bid, or bids, for providing Medi-Cal services to recipients in the area.

Furthermore, like Kaiser and other HMOs, the new organizations would be pre-paid groups; that is, they would receive some flat monthly fee to provide whatever care their patients might need. (Some call this a "capitation" fee.) Thus, the latest proposal would create many new pre-paid health organizations around the state, each providing care for Medi-Cal recipients but also stimulating competition by looking for other health-care business to make their own.

To many, the new proposal is much like the reform that former Governor Ronald Reagan launched in 1971 to put Medi-Cal on a pre-paid basis. Essentially, the Reagan administration offered relatively generous contracts to doctors, hospitals or virtually anyone else who would form a pre-paid health plan and recruit Medi-Cal recipients to join. But the administration rarely considered the ethical or financial backgrounds of the new organizers and only cursorily checked the quality of their care. Furthermore, Medi-Cal recipients were not required to join the new groups. Thus, the organizers resorted to all manner of "marketing" techniques — including door-to-door salesmen making outlandish promises — to keep themselves supplied with members. The result of all this was a series of scandals and failures that all but killed the program.

The new proposal differs in at least one key respect: Medi-Cal recipients would lose their freedom of choice under the proposal and would be required to join one or another of whatever organizations had won a contract to provide Medi-Cal services in their area. As a result, there would be no reason for the marketing scandals that created major problems for the Reagan program. Presumably, the state would limit the number of contractors in each area, assuring an adequate supply of Medi-Cal recipients for each.

Because the proposed law would limit freedom of choice, it — like last year's statute — would require a waiver of federal rules. However, Ronald Kaldor, deputy director of

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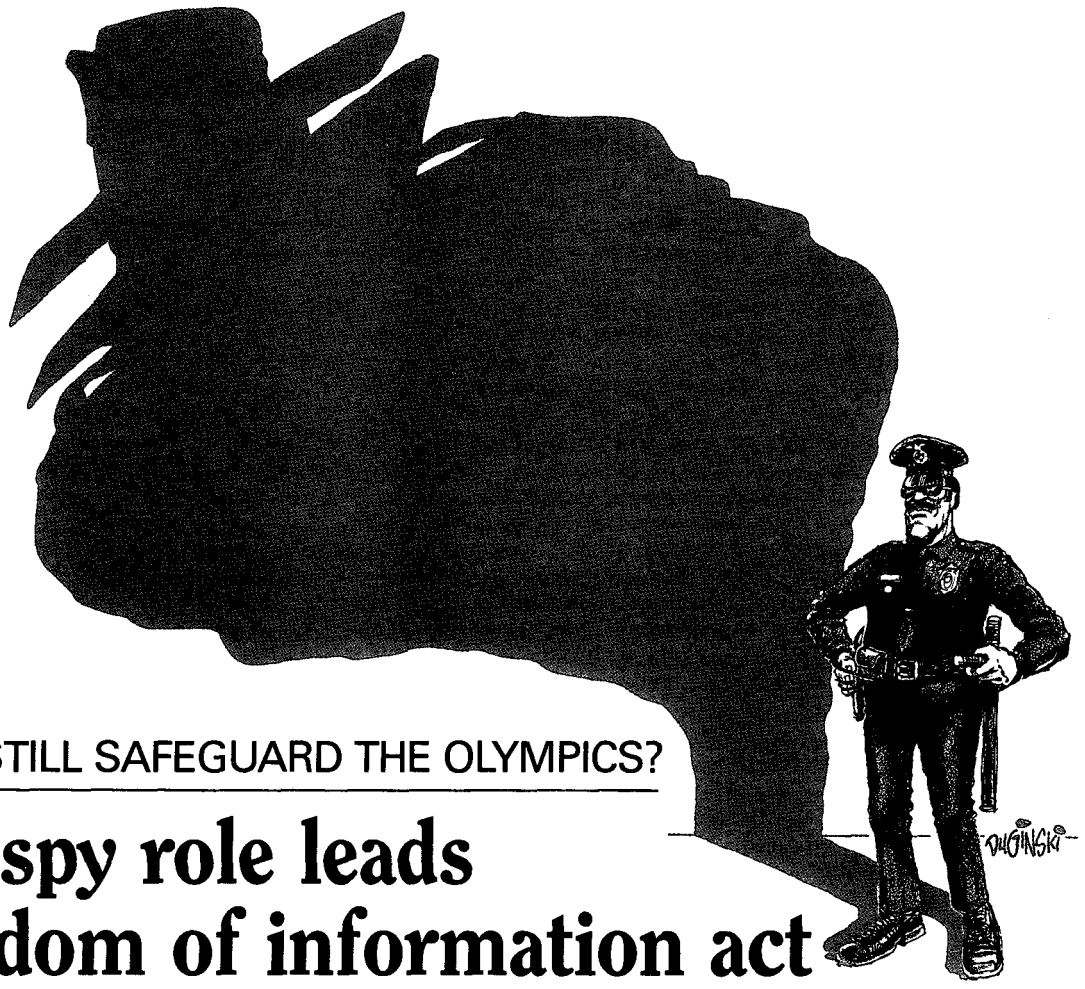

CAN THEY STILL SAFEGUARD THE OLYMPICS?

LAPD spy role leads to freedom of information act

By GREG KRIKORIAN

I was working the day shift out of Hollywood Division when the phone rang.

"Burglary, Sergeant Friday, may I. . ."

Before I could finish, the caller was yelling at me. He demanded to see a secret file that he claimed the police were keeping on him. A kook, I thought. Why would we keep a file on this nobody? And if we did, why would we show it to him?

. . .

Granted, no episode in the popular *Dragnet* series ever opened with this scene. But it seems one could have. For as Angelenos have been learning lately, an elite cadre of intelligence officers within the LAPD has been keeping files on a variety of politicians and others for reasons that are still not clear. Largely because of continuing disclosures about this unit, the city council has passed a local Freedom of Information Act. Approved last July, the ordinance is designed to discourage such police activity, essentially by assuring public access to police intelligence files. However, the measure contains so many exceptions and caveats that its full scope won't be known until a few cases on it have moved through the courts.

Although the freedom of information concept is hardly new (the FBI has been operating under such a law since 1966), the Los Angeles ordinance appears to be the first of its kind in the state. Carlyn Galway, an official with the League of California Cities, says she knows of nothing like it elsewhere. Thus civil libertarians and police will be watching to see what, if anything, happens to law enforcement.

The ordinance, first proposed in Los Angeles five years ago by City Councilman Zev Yaroslavsky, was in response to claims by the American Civil Liberties Union that an LAPD unit — the Public Disorder Intelligence Division — had spied on some 200 groups and individuals, including the Southern Christian Leadership Conference and the United Farm Workers. Lawsuits were filed charging that police were more interested in keeping political activists under surveillance than in monitoring criminals. Yaroslavsky warned colleagues that evil lurks in secrecy and that the LAPD needed to be made accountable.

At the time, few people listened, and the LAPD, its reputation mighty, derailed several efforts to broaden access to its records. But public opinion gradually began to change. Controversies over police shootings, the use of lethal chokeholds, affirmative-action hiring and rising crime all took their toll on the reputation of the LAPD and kept the department in the headlines. The controversies chipped away at the department's solid foundation of support at City Hall, and allegations of political spying intensified.

Critics charged that the public disorder unit was out of control. The ACLU and others claimed that files were kept on police commissioners, judges and other public officials including Mayor Tom Bradley. Yaroslavsky's meetings with supporters of the proposed information law were allegedly monitored by an undercover officer. A high-ranking school official was said to have been offered police intelligence files on district employees in the late 1970s.

Greg Krikorian, a reporter for Copley News Service, wrote "L.A.'s Cantankerous Councilman" for the September 1983 Journal.

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By the early part of this year, council members were being besieged by press accounts — carrying information supplied by the ACLU from court depositions — of the disorder unit's questionable activities. The high (or low) point came when Detective Jay Paul, a PDID member almost since the unit's formation in 1970, admitted storing some files at home after they had been ordered destroyed. Although the Department kept insisting that it alone was responsible for uncovering Paul's actions, the disclosure nevertheless supported charges that the unit was out of control.

Later, Paul was found to have about 100 cartons of information at home. The department said that much of it was no more than newspaper clippings. But spokesmen refused to give further details, saying that the matter was under investigation by the department's Internal Affairs unit and was, therefore, "confidential."

But there was more. Paul was to contend that higher-ups in the department had authorized his taking the information home. Also, he said, he had been supplying information to Western Goals, a foundation created by late-Congressman Lawrence P. McDonald, chairman of the ultra-conservative John Birch Society. McDonald, a Virginia Democrat, was among those who died September 1st when the Russians shot down the Korean Air Lines 747.

Within a week of the first disclosures about Paul's activities, the city's Police Commission, composed of civilian appointees, began dismantling PDID and replacing it with a new and more sharply focused Anti-Terrorist Division. But before the process was complete, the department suffered another blow. City Attorney Ira Reiner, whose department was defending the LAPD against the ACLU lawsuits and who was therefore privy to inside information, declared publicly during a city council committee meeting that "zealot" officers worked for PDID.

(Reiner's outburst could prove expensive for taxpayers. The officers being sued demanded another attorney, and a judge approved. By late August the city had retained three law firms to defend itself and various police officers. Estimates were that the final bill would total several million dollars.)

But regardless of whether Reiner's criticism was wise, it may have been the straw that broke the department's successful opposition to a freedom-of-information act. On July 13th the city council approved the ordinance and Mayor Tom Bradley later signed it into law.

For the first time, the general public has access to LAPD intelligence records unless disclosure:

- endangers foreign dignitaries or investigations of prison gangs;
- interferes with an on-going investigation or criminal proceeding;
- denies someone's right to a fair trial;
- identifies a confidential source of information in a criminal probe;
- threatens security plans or investigation techniques; or
- jeopardizes someone's life or safety.

Despite the safeguards, the LAPD worked until the eleventh hour to defeat the law, insisting that any change in disclosure laws should be made at the state level. Otherwise, the department said, Los Angeles would be cut off from other law enforcement agencies, including the FBI, for fear that confidential information would be released if it was shared with the LAPD.

A compromise

But the concern, echoed by various other law enforcement agencies, was resolved when the council agreed to exempt confidential information from other departments. The change meant no one could force the LAPD to reveal anything from other departments that the others would not have to disclose under their own guidelines. "We were concerned before. But now there is no conflict and no concern," says Captain Bill Hinkle of the Los Angeles County Sheriff's Department.

"Some might say that it doesn't do much," says Pete Echeverria, the assistant city attorney who drafted the new law. "But the intent was to deal with perceived abuses within PDID. So within the city it allows greater access to those kinds of intelligence records. To that extent, the concept might interest other municipalities even if the particulars don't apply."

The final version of the FOIA applies only to records compiled by PDID or its successor unit — a fact that softens some of its harshest critics such as Assistant Police Chief Robert Vernon. "The way the political winds were blowing, we were in a hurricane," he says. "We got a law that was much better than we initially expected."

But the hurricane may not have passed. Already, Yaroslavsky indicates there might be grounds for amending the FOIA to cover other LAPD departments. The suggestion stems from recent claims that a member of the department's Organized Crime Intelligence Division also spied on public officials. Court depositions by Detective Michael Rothmiller were released by the ACLU and include admissions that he compiled intelligence information on officials, including Mayor Tom Bradley. He also testified that there was interest — and some investigation — in determining whether one unnamed official was a homosexual and if another, also not identified, was having an extramarital affair. In late September the claims were disputed by one of a stable of attorneys for the city. In a later deposition, the attorney says, Rothmiller clarified that the public officials were not targets of OCID investigations but that their names appeared during other probes and that most of the information was provided, without request, to the LAPD from unidentified sources.

The ACLU had collected the Rothmiller information while preparing for trial on its five-year-old charges that the public-disorder unit was guilty of illegal surveillance. Hoping to extend the scope of the trial — which is scheduled to begin November 14th — the ACLU had asked the court for permission to seek more information from the organized

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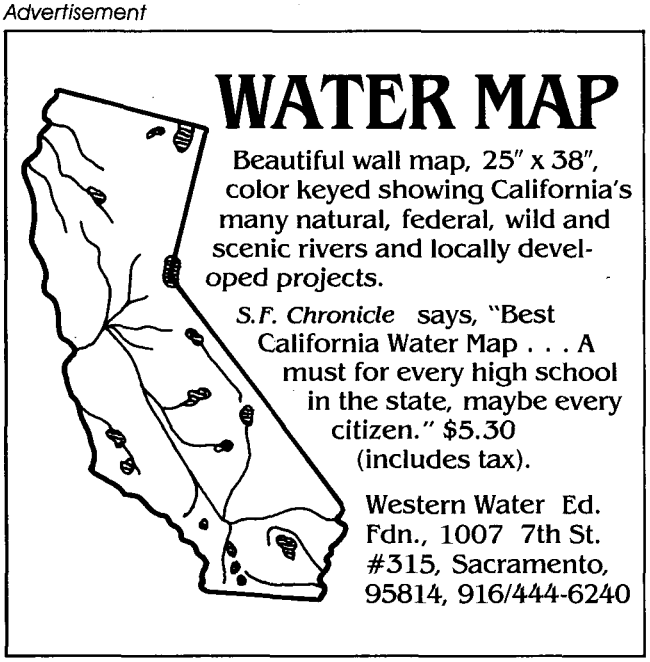
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crime division. But on September 27th, the court agreed with the city and refused.

Los Angeles police chief Daryl Gates believes that the new law is unnecessary and that the coming trial will prove it by absolving his department and the disorder unit from any wrongdoing. In the meantime, he says, Los Angeles is stuck with the FOIA, a law that he considers particularly troubling because of the 1984 Summer Olympics and the obvious potential for terrorism or political disruption. The LAPD, he says, should not be hamstrung protecting the city. Especially with the Olympics right around the corner.

"The charges made against us are so unfair and untrue. I have always said we are not perfect, and, since most of the law on this subject of intelligence-gathering is uncharted, the courts may say we have gone beyond the bounds of reasonableness. (Detective) Jay Paul is an aberration. Every department has that once in a while. That doesn't mean it is accepted or condoned," Gates says.

"I can't account for what he had in his garage. I can't say we don't have other aberrations. We may have. People in intelligence are string savers. But we have never hurt anyone with intelligence information," the chief says. "I look at Jay Paul and still don't believe he did anything with an evil intent. That doesn't keep him from being charged administratively and perhaps criminally, because you have to follow the law. There's no question he was misguided. But he deserves to be heard in a fair setting."

Gates' assistant, Vernon, notes that the new law could be expensive for taxpayers. "We have to search and respond to every request," Vernon says bitterly. "That is going to cost. It seems to me that the FBI said it would cost $1 million-a-year (to comply with the federal FOIA) but spent something like $14 million last year alone."

The argument is lost on Yaroslavsky and other longtime supporters of the FOIA. "Cost is a false issue," he says, noting city estimates that it would cost $200,000 initially to index files and $165,000-a-year afterwards to process 300 applications. "Besides," Yaroslavsky says, "if the department is complying with the law, it won't have to divulge information because it won't have those kinds of files on anyone."

Not surprisingly, Yaroslavsky was among the first to use the new law by requesting to see his file. However, the results did not please him. In the first place, he says, much of the information in it was inaccurate. Among other things, it listed the wrong name for his mother, a wrong address for him and it showed him owning a car he had long since sold. And, he complains, the file opens with a 1976 threat against his life that was never relayed to him. (As a result of the latter, LAPD has a new policy: threat victims will be notified.)

Furthermore, Yaroslavsky contends, the police have more information about him that they are refusing to divulge and he will go to court to get it, if necessary. Gates says that Yaroslavsky has seen it all. "I guess that shows what a lack of interest we had in him," Gates says.

According to Gates, about 130 persons have applied for information under the new law. "That's in a city of three million, a county of seven million and a state with 26 million people. If you use those figures as the balancing test of the public's interest, you will see that no one really wants this. No one is crying for this law . . . only Zev and his Marxist friends."

But Yaroslavsky believes interest will grow. "I think the magnitude of this issue is beginning to dawn on people. It's quite a significant problem and I am concerned it is going to work its way up in the department . . . and that it may go up very high."

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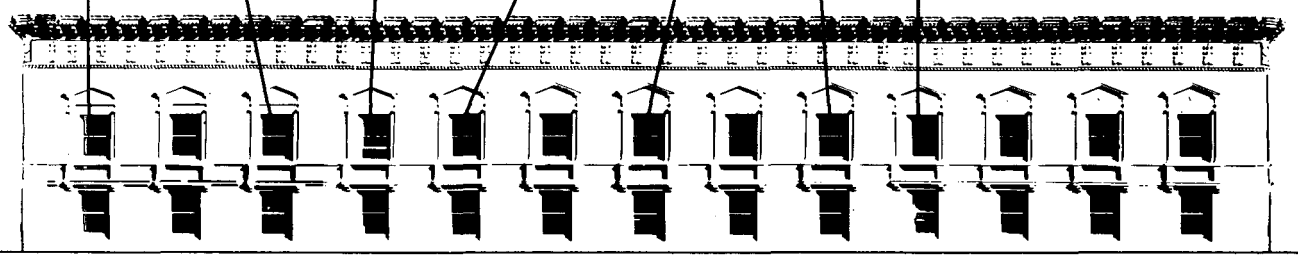

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HERBICIDE SPRAYING

A THREAT TO NORTH COAST WATER?

By J.A. SAVAGE

You are driving on a rural road winding into the coastal mountains north of Eureka. The forest around you is dense and lush; a clear stream tumbles alongside the road. Suddenly, you come upon a clearing the size of four football fields. The remnant of an old timber cut, the clearing is dotted with scrub brush and waist-high saplings.

But something is wrong. The vegetation is brown, dead-looking, and some of the stems have turned slimy and black. This clearing has been sprayed from the air with herbicides, a practice that has many residents of Northern California's forest communities upset and concerned.

The timber industry, backed by the United States Forest Service, argues that spraying — most often with an herbicide called 2,4-D — kills unwanted growth, thus stimulating desired trees and making forests more productive.

J.A. Savage is a freelance writer from Arcata.

But critics of spraying charge that 2,4-D pollutes water, contaminates crops and may even cause cancer and birth defects. They also claim that people who live near spray areas are given little notice once a state agency grants a permit to spray.

Adding heat to this controversy is the nature of those who live in often-remote forest communities. Many were young migrants from cities who made up the "back to the land" movement during the late 1960s and early 1970s. Buying plots of ground that bordered forests, they grew their own vegetables, raised small amounts of livestock and drew water from nearby streams. And in some cases, they used the canopy of trees to hide plots of highly profitable marijuana.

At the same time, long-time residents, traditionally conservative and traditionally tied to timber interests, were loosening their bonds to the timber industry. A major reason for this was the changing character of that industry — from one dominated by locally owned mills to one dominated by international conglomerates. In any case, when

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few communities have municipal water sytems and when streams and springs mean drinking water and irrigation, the threat of contaminated water — coupled with the threat of contaminated people — has residents of places like Weaverville and Orleans up in arms.

Timber companies explain that conifer trees like pine, fir and redwood — those grown commercially — grow faster without competition from scrub brush and hardwood saplings. Thus, herbicides are applied to kill such vegetation before young conifers are planted. Forest herbicides like 2,4-D are synthetic plant hormones that cause broadleaf trees and brush to grow themselves to death. Government and timber officials claim 2,4-D is safe for humans and wildlife although it is a cousin of two other herbicides (2,4,5-T and Silvex) banned by the Environmental Protection Agency in 1979. Those herbicides were found to be contaminated by a highly toxic substance known as TCDD dioxin. (The most notorious member of that family, with the highest concentration of dioxin, is the defoliant known as "Agent Orange" used to denude Asian jungles during the Vietnam War.) The two were banned because an EPA study of pregnant women in Oregon revealed a correlation between herbicide spraying and spontaneous abortions, a danger some residents of forest communities in Northern California claim also applies to 2,4-D.

But health evidence is difficult to sort out. "The evidence to date says this (health problems from 2,4-D) isn't happening," says Dr. P.H. Kurtz, a medical coordinator for the California Department of Food and Agriculture. The CDFA is one of two state agencies that issue permits for aerial spraying. (The other is the state Water Quality Control Board and its regional affiliates.) While not doubting the sincerity of people who complain about health problems, Kurtz thinks herbicides are used as scapegoats.

"These people are . . . out there in nature, and there is no protection of hygiene enforced by a public health department," he says. "We can't reproduce the same symptoms in controlled situations (using 2,4-D)."

Helicopters at dawn

Normally, herbicides are applied from helicopters. But an herbicide is not a bomb dropped on a specific target. It is droplets ejected over a wide area and subject to the vagaries of wind and pilot error. As a result, herbicides have been known to drift off-target, contaminating gardens, livestock and people. More important, they have been known to drift onto streams and springs, contaminating water supplies.

To prevent accidents that might affect water quality, the state Water Quality Control Board reached agreement with the Forest Service in July 1983 on what are called "best management practices" for aerial spraying in national forests. Among other things, these practices prohibit spraying within a 100-yard buffer zone around streams, lakes and springs. They also prohibit spraying when a 50 percent chance of rain exists and when wind speeds and shifts reach unpredictable levels. These practices are considered general guidelines only — and regional water quality boards may require public hearings before a spray permit is actually issued.

These guidelines, however, apply only to Forest Service spraying. They do not apply to spraying done by private timber companies, yet the private companies have experienced some of the worst spraying accidents. In 1979, for example, Agnew Timber Company sprayed 2,4-D directly into a tributary of the Smith River, a major source of water for Del Norte County. Even after two weeks and several rainstorms, the creek still contained two parts per billion (ppb) of 2,4-D, considered a significant amount by WQCB standards. Two years later, Agnew and the helicopter company that did the spraying were each fined $2000 in an out-of-court settlement with the state.

(The state WQCB has set several standards to judge acceptable levels of herbicide in water. The maximum level for 2,4-D in water that contains fish and aquatic plants is 10 ppb immediately after a spraying; two ppb within 24 hours after a spraying. Humans are considered more tolerant than fish and plants. The federal EPA, for instance, says a level of 100 ppb is safe for drinking water.)

This past spring there were four instances of spraying-related water contamination reported by North Coast Regional WQCB, including three separate incidents involving

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Miller-Rellim Redwood Company of Crescent City.

And in late August the Forest Service sprayed 2,4-D over 105 acres of the Tahoe National Forest near Truckee. The site was near Sagehen Creek, which flows into Stampede Reservoir, a water source for the city of Reno, Nevada. The Lahontan RWQCB has ordered the Service to sample water in the area for possible contamination.

"We've always gotten some (herbicide) in the water," admits Jim Rydelius, a silviculturist for Simpson Timber in Arcata. "Out of 100 samples we take, 10 will have a detectable level (of 2,4-D)." Rydelius says the amounts are "insignificant."

But critics claim that no one really knows what amount of 2,4-D contamination is harmful nor are the effects known from chronic low-level exposure.

The worry over possible harmful effects was enough in 1979 for two northern counties — Mendocino and Trinity — to attempt to ban aerial spraying entirely. The state, however, said the two had overstepped their authority. In taking Mendocino County to court, then-Attorney General George Deukmejian argued that state control over herbicides preempted local control. The state won in superior court and was upheld in the Court of Appeal. The county has appealed to the state Supreme Court.

The problem of notice

Trinity County, on the other hand, conceded state authority over herbicides. It said the Department of Food and Agriculture failed to adequately notify the public when it issued a permit to spray.

That criticism received legal support when, in February 1982, a Humboldt County Superior Court abolished the CDFA's process for granting aerial spray permits because the process did not provide adequate notice to nearby residents who might want to challenge the issuance. Without proper notice, Judge Henry Broderick noted, residents might first learn of a spray operation when the helicopter drones above their homes. (Ironically, in 1980, Humboldt County voters had turned down an ordinance that would have banned aerial spraying.) As a result, Broderick slapped an injunction on timber companies, preventing them from spraying until the issue of notice was resolved to his satisfaction.

Meanwhile the USFS sprayed without a permit, dousing more than 500 acres of timberland near Orleans during the fall of 1982. The Service claimed — and a lower federal court agreed — that federal agencies were exempt from local and state regulations. But the Ninth District Court of Appeals disagreed. It based the decision on an executive order from former President Jimmy Carter that ordered federal agencies to abide by local regulations. Following this December 1982 decision, the USFS came under CDFA permit procedures.

Following issuance of that injunction, the CDFA twice tried to devise adequate permit regulations but each time, its efforts were found to be inadequate. Finally, in August of this year, Judge Broderick agreed to CDFA's third proposal.

"A reason it was so difficult to provide notice is the remote nature of the area," explains Lisa Brown, a CDFA attorney. "Some people who live up there aren't even sure where their boundary lines are."

To get around the problem, CDFA now posts permit notices in post offices and common gathering spots and mails notices to all people who own property within 300 yards of a spray site. Just to be safe and sure, timber companies involved in the most recent sprayings even broadcast information over radio and television.

Once the court's objections were satisfied and permits issued for fall spraying, 20 residents of the affected counties appealed the permits to the director of CDFA. An administrative law judge, hearing those appeals on behalf of the director, denied all 20 at the end of September.

It is not, however, the end of the battle. Although he has lifted the injunction, Judge Broderick still wants people to have enough time for appeal. To this end, he has required CDFA to bring in new regulations by January 1984 to require adequate time between issuance of a permit and the start of spraying.

There is, of course, an alternative to aerial spraying: sending in foresters armed with chainsaws and axes to clear out the underbrush. While the USFS will use this method, the timber industry considers it both costly and inefficient. Currently, according to industry officials, spraying costs upwards of $75 an acre while manual methods cost at least $120 an acre. And Matt Anderson, an official of the California Forest Protective Association (a group that represents 32 timber companies), adds that the per-acre cost difference is an expense that compounds over the 50- to 100-year life cycle of each tree.

"You don't see a farmer park his tractors and hire people with shovels to plow his fields," adds Simpson's Rydelius.

Water, water everywhere . . .

"Water, water, every where. Nor any drop to drink . . ."

This lament applies to salt water, but people who rely on water often sprayed with herbicides fear it may someday apply to rivers and streams that feed their reservoirs. As a result the bottom line, so far as residents are concerned, is that no one — not the government, timber companies nor the medical profession — really knows the long-term effects of exposure to herbicides, and this groping in the dark will concern forest-community residents for years to come.

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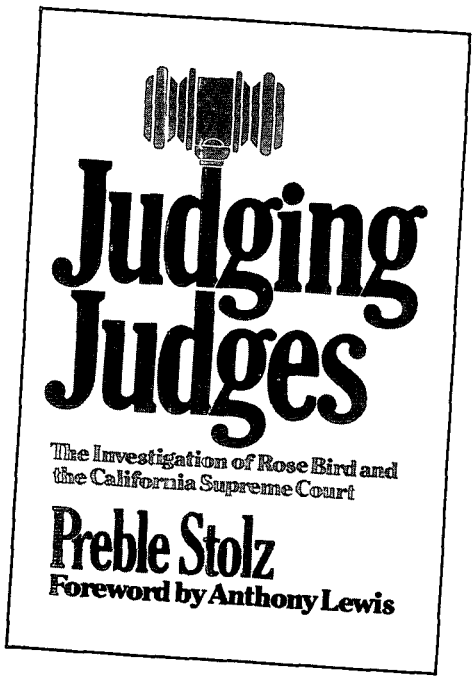
Two books, two views of the high-court political battle

By RICHARD THOMSON

On June 11, 1979, the Commission on Judicial Performance met in public session to determine whether one or more justices of the California Supreme Court had delayed issuing decisions in order to assist in the reelection of Chief Justice Rose Bird, whether Bird or any other justice had


Judging Judges
The Investigation of Rose Bird and the California Supreme Court
Preble Stolz
Foreword by Anthony Lewis

lied when they denied such delays, and whether Justice William Clark or any other justice had improperly revealed confidential information about pending cases to the press. Four months later a substitute supreme court found the public proceedings to be in clear conflict with the California Constitution. During that time the people and processes of the Supreme Court were exposed to the public to a degree unprecedented in the history of this country, and animating these revelations was testimony about the bitter conflicts between Bird and Clark.

Richard Thomson, chief counsel to the Senate Judiciary Committee, wrote "Trailer Bills: the Legislature's Incredible Hulk" for the September Journal.

These bizarre and unprecedented events have spawned two books, *Judging Judges* by Preble Stolz (436 pages, Free Press, $19.95) and *Framed* by Betty Medsger (284 pages, Pilgrim Press, $17.95). The Stolz book, first published in 1981, is by far the better. It is a serious study of the Supreme Court as an institution and the ways in which the commission's investigation showed weaknesses in that institution. The Medsger book was published earlier this year and is, in contrast, a political tract. With much argument but few facts, it claims that Bird's troubles were the result of a conspiracy organized by the political right wing.

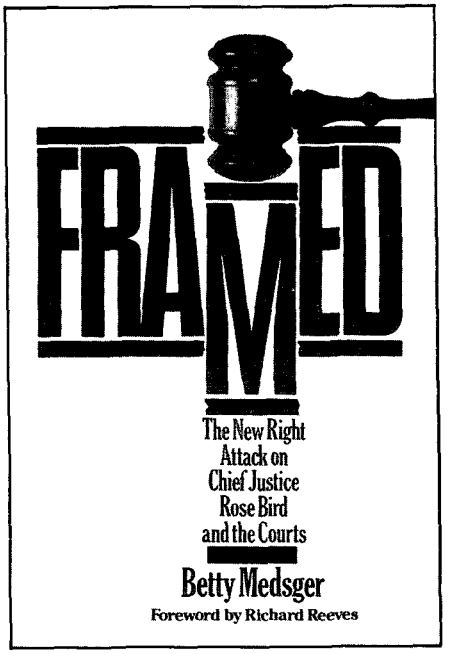
Before saying more about the two books, let us recall the events that caused the commission to investigate the court. The proceedings were the direct result of the politicking surrounding the reelection of Chief Justice Bird. Bird had been appointed by Governor Jerry Brown in 1976; on November 7, 1978, California voters had the opportunity to decide whether they wished to retain her as chief justice.

As a liberal, a Brown appointee and the one member of Brown's administration who had been most involved with the establishment of the Agricultural Labor Relations Board, Bird was instinctively opposed by many conservatives. California, however, has an unbroken tradition of reelecting its justices, and her opposition needed an issue to have any chance of success. In July 1978, *New West* magazine (since renamed *California Monthly*) provided one.

The Supreme Court had decided the case of *People v. Caudillo*, holding — in a long and diffuse opinion based on the legislative history of Penal Code Section 461 — that conviction for rape did not by itself authorize a court to impose an additional penalty for the infliction of great bodily injury. Bird concurred in the decision. The case was brought to public attention by a *New West* article entitled "Rose Bird and the Politics of Rape," which claimed that the decision "scandalized both law-and-order hard-liners and militant feminists" and speculated that it would cost Bird votes in her election. At no point did the article state the reasons for the court's decision but instead quoted feminists condemning anyone who denied that rape was great bodily injury. The article set off a storm of criticism of Bird and the court in conservative newspapers, and even led Secretary of State March Fong Eu to declare that Bird was "soft on rape."

Damaging advertising

The article was later used as a campaign piece and as the basis for a television commercial by Senator H. L. Richardson and his Law and Order Campaign Committee, the leading anti-Bird organization. The commercial showed a young woman pursued by a masked man into an elevator, the door closing, and finally the same



woman, bloody and sobbing on the floor, with her clothes badly dishevelled. Announcer's voice: "Next May that rapist could be on the streets again because Rose Bird and the Supreme Court reversed an appellate court decision and said that they did not think the victim had experienced 'great bodily injury.' " While the commercial was shown only briefly on a

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few stations, it received much press coverage throughout the state.

In October Attorney General Evelle Younger, then running for governor against Jerry Brown, accused the Supreme Court of withholding decisions in death penalty cases and in the case of *People v. Tanner* (the first case to challenge the use-a-gun-go-to-prison law) in order to aid Bird's election. Younger backed down on the former claim after being told by his own Department of Justice that no death penalty case had been argued before the court, but he reiterated that there was a question as to whether *Tanner* was being intentionally postponed. Later, Richardson himself publicly made the same claim.

Then, the morning of November 7th, election day, the *Los Angeles Times* published a page one story saying that the court had decided to overturn the "use a gun, go to prison" law, but that the court was delaying announcement of the decision. The article implied that the delay was to assist Bird, and added that two justices "could not explain why the outcome had not been announced." The story was widely quoted by radio and television during election day. Because of the *Times* story, the attacks of her opponents, and a general anti-judge sentiment, Bird won confirmation as Chief Justice by only 51.7 percent of the vote. On election day, Bird issued her own statement denying the *Times* story and stating that no decision in any case had been delayed for political reasons.

During the next few weeks the public's attention turned to Clark. It was reported that he had refused to sign a statement denying that the *Tanner* decision had been delayed for political or other improper reasons, and he told the *Washington Post* that he had "decisive reasons" for his refusal. He also circulated a memorandum to the court that said: "In conscience it must be clear to all on the court that the *Tanner* case was signed up and ready for filing (made public) well in advance of November. The question remaining appears to be why it was not filed?" His acts lent credence to the charges of delay and intensified the public suspicion of Bird and the court.

Bird's response

Bird responded by calling for an investigation by the Commission on Judicial Performance, the body established by the Constitution to investigate charges of judicial misconduct. The press demanded public hearings, and Bird endorsed them through an aide. The Judicial Council agreed that the hearings would be open, though the Constitution speaks of the "confidentiality of (the commission's) proceedings."

The commission began its public hearings on June 11, 1979, and heard the testimony of Justices Bird, Clark, Richardson and Tobriner, as well as of a number of staff attorneys. During the testimony it became clear that Clark had no hard evidence for his charges.

The testimony also showed that delays in the court's handling of the *Tanner* case resulted largely from a continuing feud between Clark and Bird. Specifically, Clark insisted on adding a footnote to his *Tanner* opinion that Bird believed was politically motivated. (The footnote criticized Bird's opinion in the *Caudillo* case and therefore could have been used by her opponents.) As a result, Justice Wiley Manuel withdrew his name from Clark's *Tanner* opinion and took additional time to write an opinion of his own.

Meanwhile, Justice Mosk, unwilling to testify in public, sued to close the hearing on the grounds that the Constitution requires confidentiality of commission proceedings. A substitute supreme court, chosen by Bird, ultimately upheld Mosk, and his testimony and that of Justices Manuel and Newman occurred behind closed doors.

On November 5, 1979, almost exactly one year after Bird's election, the Commission on Judicial Performance announced that its investigation was terminated and that no formal charges would be filed against any Supreme Court justice.

The first of the two authors, Stolz, is a former deputy attorney general and aide to both governors Edmund G. Brown Senior and Junior. Presently, he is a professor of law at UC's Boalt Hall. To the prospective reader such qualifications may be as ominous as the possession of a PhD in Education, yet the book is clear, fast-moving and marked with wit.

Who leaked?

How did Betty Medsger get her hands on confidential testimony given during the spectacular investigation of the State Supreme Court four years ago? As noted in the accompanying review, the statements from Associate Justice Stanley Mosk are an important part of her book. One person who seems sensitive about the question is Appellate Court Justice John T. Racanelli of San Francisco, chairperson of the Commission on Judicial Performance. It was the commission that investigated the court and received the confidential testimony.

Racanelli says that he met Medsger, who teaches journalism at San Francisco State University, while she was working on the book more than a year ago and that they became "close" friends. He declined to discuss the degree of closeness and warned twice during the interview that any statements accusing him of leaking the information to her would "amount to malicious and reckless disregard of the truth," a legalism meaning that he would have grounds to sue.

Racanelli was a member of the commission when it investigated the Supreme Court but did not participate in the investigation. He says that the commission's copies of the confidential testimony have been under lock-and-key ever since and that he has seen none of it, except for the portions that appeared in Medsger's book. (A commission spokesman notes that additional copies of the testimony were distributed to the justices who testified and to various attorneys connected with the investigation.) Racanelli says Medsger told him a few weeks before her book was published that she had the information and he indicated that he passed the word to the commission at that time.

Will the commission try to find the leaker? Racanelli says that he cannot answer such questions since that would involve a disclosure of confidential information. However, he notes that the commission has been expecting questions and prepared a public statement some time ago. The statement says that the commission has reviewed itself and decided that none of its members, staff or former members disclosed the confidential information. The statement concludes: "The 1979 investigation was a stressful and disturbing experience. But it is now history, and no public purpose will be served by engaging in new speculations or recriminations."

Robert Fairbanks

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Stolz's primary theme is that, over the past 15 years, the Supreme Court has lost much of its political support. "In truth, the California Supreme Court's performance during much of the Seventies was open to considerable criticism; the downhill direction was established well before Bird's appointment. In addition to scholars increasingly skeptical about the quality of the court's decisions, a very broad spectrum of politicians were angry at the court." Stolz goes on to describe how the California Supreme Court "came to be great," how it subsequently lost support within the legal as well political community and what actions it could take to regain that support. Mixed in are critical evaluations of the court's decisions in *Caudillo*, *Tanner*, and other cases. Stolz skillfully dissects their logic and language and applies a standard of excellence in judging the work of these judges which should be applied more often. The book is one of a very few which describe how an appellate court really works, and students of the judiciary will be consulting it long after the Bird-Clark feud is remembered only by political trivia buffs.

The second author, Medsger, is a former reporter who now teaches journalism at San Francisco State. Her writing is clear, albeit at times strident.

"California," she writes, "has been the scene of an ominous dress rehearsal. Since 1978 the New Right has been refining its plan to revolutionize the nation's courts by attacking the California courts. The national proponents of the plan include powerful figures in the Reagan administration who helped design and execute the California dress rehearsal . . . This book . . . is a story of treachery and tragedy. It is a warning of the techniques planned for the destruction of independent courts in the United States."

Amongst the conspirators, Medsger finds Senator H.L. Richardson and his Law and Order Campaign Committee, members of the White House staff, much of the press ("journalists . . . were part of the deception") and employees of the Supreme Court ("these two forces — those outside the court and those inside — had come together to work for the defeat of the Chief Justice"). There was No-On-Bird, "an agriculture-based campaign organization headed by Mary Nimmo, the daughter of (Justice) Clark's friend Robert Nimmo, president Reagan's appointment as head of the Veteran's Administration." (Medsger may not have known that, prior to his appointment, Nimmo had been a state senator who, for four years, sat within 15 feet of H. L. Richardson.)

The Los Angeles Times became part of the plan with its election-day article ("Richardson . . . had accomplished quite a coup"), but apparently not *New West Magazine* despite the fact that its *Caudillo* article, as politically damaging to Bird as that of the *Times*, was biased and inaccurate. A portion of Medsger's book originally appeared as an article in *New West*.

Though her book is full of allegations of conspiracy, Medsger does little to show links between the parties. Indeed, some of her facts show a lack of conspiracy. For example, Senator Richardson could raise only $200,000 for his anti-Bird campaign; if he had actually been backed by the New Right establishment, money would not have been a problem.

Yet while Medsger's main thesis is unconvincing, the reader has two reasons for consulting her. The first is that she, unlike Stolz, had access to closed-session testimony before the commission. That testimony is important in weighing the charges made by

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Bird and Clark. For example, Clark in open session said that Justice Mosk had told him: "Bill, before election day I told (Justice Tobriner) that it was obvious that cases were being held up for filing after election, and I told him that it was obvious and if it were later revealed he would have to pay the consequences." That statement, if true, would have gone a long way to substantiate Clark's charges of intentional delay. Medsger reports, however, that in closed session, Mosk flatly denied having ever made such a statement to Clark.

Medsger also offers a different perspective on the relationship between Bird and Clark. Stolz sees the Bird-Clark feud as a striking indication of the decline of the court, but places responsibility for the feud on Bird and regards Clark as a "plain man who did his best to express a conservative view-point and who was startled to find himself in the middle of a brouhaha he did not know how to escape." For Medsger, Clark is a villain and Bird a more or less innocent victim.

Reagan's man

Chief Justice Rose Bird and former Justice William Clark are similar in a number of ways. Both were relatively young when appointed to the Supreme Court (Bird, 39; Clark, 41) and both came to the Supreme Court solely because of their close connection to a governor. Clark served as Governor Reagan's chief of staff, then was appointed to the Superior Court by Reagan in 1969, to the Court of Appeal in 1971 and to the Supreme Court in 1973.

Aside from his loyalty to Reagan, Clark seemed to have comparatively few qualifications. He had graduated from neither college nor law school, and his experience as a practicing attorney was limited.

On the other hand, he faithfully fulfilled his mission of being Reagan's man on the court. His votes and opinions were impeccably conservative. He frequently called the governor's office, and Medsger quotes former Chief Justice Donald Wright as believing that he discussed pending cases with members of Reagan's staff, a practice which Wright thought to be highly improper. After Reagan left office, Clark maintained contacts with such Republicans as Senator Richardson and former Reagan staffers who were active in Attorney General Younger's campaign.

It is not necessary to accept a conspiracy theory to see that Clark remained very interested in state politics. He must have known the political implications of adding a mention of *Caudillo* in his *Tanner* decision and stating that he had "decisive reasons" for refusing to sign a statement clearing the court of wrongdoing. Yet Professor Stolz portrays Clark as someone largely unconscious of the consequences of his acts. Clark's "decisive reasons" statement was not, he suggests, a calculated maneuver to question the chief justice's truthfulness, but likely reflected nothing more than a "rigidity in his thinking." As for Clark's insistence in mentioning the *Caudillo* case in his *Tanner* opinion, Stolz admits that the citation was unnecessary to make Clark's point and could have been withdrawn. Also, the discussion of the citation occurred after the unveiling of the Richardson commercial showing rape in the elevator. Under the circumstances, withdrawal of the citation should have been an automatic act of courtesy.

Perhaps Stolz was bemused by Clark's willingness at times to appear ignorant and not overly bright. During his confirmation hearing for the position of Deputy Secretary of State, he seemed barely capable of naming the continents, and yet within nine months he was National Security Advisor to President Reagan, and shortly thereafter was instrumental in removing Secretary of State Alexander Haig from his job. And now Clark is moving again. On October 13th, the president called Clark his "troubleshooter" and named him to replace James Watt as Secretary of the Interior.

Unlike Clark, Bird graduated from both college and law school, and unlike Clark she was appointed to the Supreme Court without having served for a single day as a judge. Like Clark she was appointed to be the governor's person on the court. Brown — who had no clear ideology of his own — was probably not greatly interested in Bird's judicial views, but as with so many of his acts he was primarily concerned about the image conveyed by the appointment. He wanted to make history by naming a woman, and he wanted that history to be remembered. Like Clark, Bird has fulfilled the function for which she was chosen; her name has continued to be linked with Brown's though perhaps with different consequences than he foresaw.

Bird as administrator

Bird has never been accused of being unable to perform her duties as a justice, but some — including Professor Stolz — question her competence as an administrator. The Chief Justice of California is the chief administrator of the courts, and her decisions may affect judges at all levels. It is a reflection of how those decisions were perceived within the judiciary that when an anti-Bird organization mailed ballots on the chief justice to the 1114 judges in the state, 221 were returned marked "no." One-fifth of Bird's colleagues were willing during the campaign to indicate to her opponents that they too opposed her.

Medsger explains this hostility on the fact that Bird made changes in the system, and judges are notoriously resistant to changes affecting themselves. Stolz looks more to Bird's personality. While crediting her exceptional conscientiousness and hard work, he lays many of her troubles to her inability to discuss problems and proposed decisions with any other than known friends.

Ironically it is Medsger, in her defense of Bird, who provides the most damaging information against her. Medsger reports that members of the staff of the Supreme Court "called relatives and friends throughout the state and asked them, in turn, to spread the word to vote no on Bird. Some of them . . . walked the streets of their neighborhoods in the Bay Area, went door-to-door urging a no vote on Bird." This is extraordinary behavior for those who were devoting their professional lives to the court and who had always been known for their loyalty and discretion. It is all the more extraordinary in that they were placing themselves on the same side as Senator Richardson, whose *Caudillo* commercial they knew was inflammatory and unfair, and Attorney General Younger, whose charges of death-penalty delay they knew to be untrue. The cause of this uncharacteristic behavior must have been very serious indeed, though it is not clearly described by either Medsger or Stolz. The staff actions prove beyond doubt a serious administrative failure.

These books, then, tell the story of how the California Supreme Court was temporarily disrupted and perhaps permanently weakened by the bitter clashes between a conservative and politically active Justice and a liberal and abrasive Chief Justice. Such clashes of politics and personalities are not unprecedented, even on appellate courts. Is there some special lesson to be learned from this particular story?

For Medsger the moral is simple: "This book is the story of how the New Right, including people who are now high White House officials, cleverly and with a lot of good luck (read: an unquestioning press) created an image of a court that is responsible for many of the ills of society and that, therefore, should be discredited and

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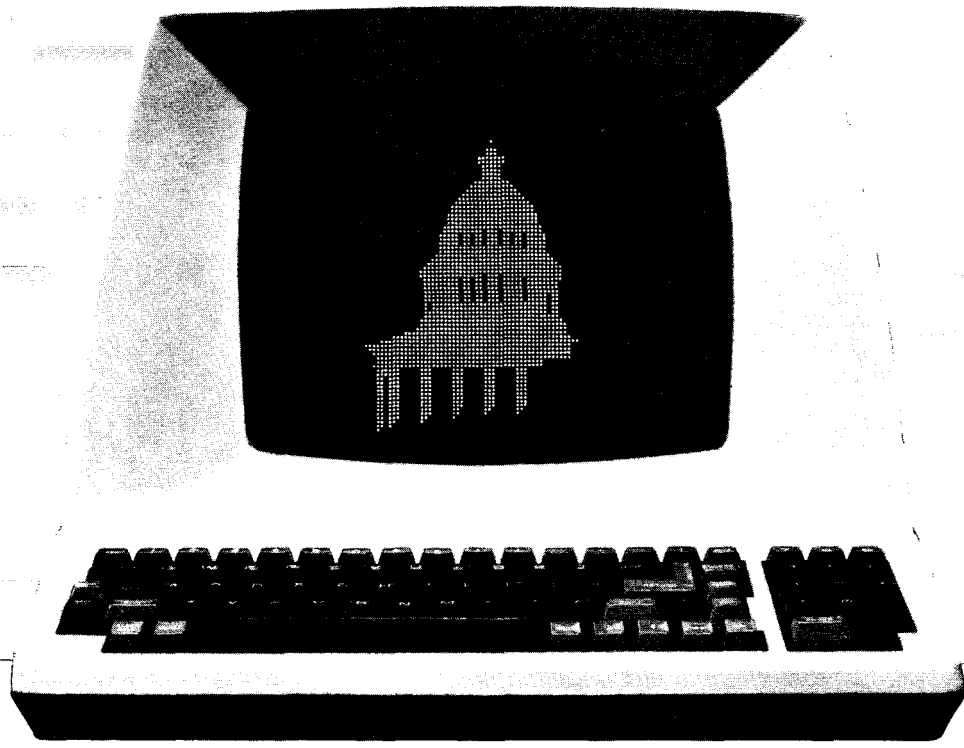

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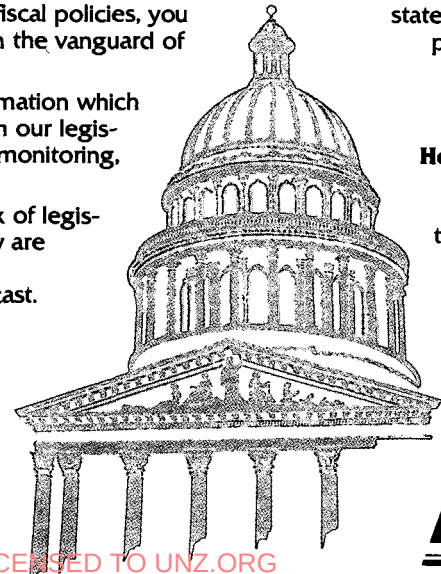

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Nielsen: "The motivating goal in my life is leadership."

By REBECCA LaVALLY

Senate Minority Leader Jim Nielsen talks as though he was born to lead. "I enjoy leadership and I know I have the leadership talent," he says. "The motivating goal in my life is leadership and wherever I am, I'm going to be involved."

But others in the Senate are not so sure. Thrust into the leadership spot by unique political circumstances but four months ago, this 39-year-old grown-up farm boy has yet to prove he can do the job. "He's trying hard to grow into the office, and he does have an amazing ability to make you believe he is listening and hanging on to each word you say. But nothing gets done unless you stand there and watch him do it," says one unfriendly colleague.

Nielsen, who represents an agricultural district in the Sacramento, Napa and Sonoma valleys, was laboring more or less obscurely in the Senate until, late last June, lightning struck. Long rent by feuding between conservatives and moderates, the Senate's tiny band of 14 Republicans (out of 40 members of the upper house) suddenly found itself in the midst of new turmoil over its leader, moderate William Campbell of Hacienda Heights.

Dissatisfaction with Campbell's leadership had been growing for a number of reasons, not the least of which was the loss of three GOP Senate seats since 1982 (two during the 1982 election and one because a disgruntled member bolted the party). The minority leader had even gone on vacation during the middle of the 1982 campaign. But the straw that broke Campbell's back was his unexplained opposition to one of Governor Deukmejian's appointees, Department of Forestry Director Jerry Partain. Reportedly, Campbell blocked the nomination because Partain opposed buying four Canadian-built fire-fighting planes that Campbell wanted bought. Behind all this was a continuing feud between Campbell and arch-conservative Senator H. L. Richardson of Arcadia, a feud that began in 1979 when Campbell ousted Richardson as caucus chairman. The dissatisfaction merely gave Richardson and his allies a new excuse to pounce on Campbell. It was at this point that Nielsen got the job.

An unlikely choice

Not that the little-known senator from Woodland was a likely choice. Indeed, Nielsen may have succeeded because no one but he and his predecessor wanted the leadership spot. For instance, some of the more well-known GOP senators — Richardson, caucus chairman Ken Maddy of Fresno and Ed Davis of Chatsworth — ruled themselves out of the running. The outspoken Richardson knew that he wasn't acceptble to enough of the caucus. Davis might have been acceptable but wasn't interested in leading a minority of anything. And Maddy, a close ally of Campbell, refused to help do in his friend. Other candidates, insiders say, were considered too new, independent, incapable or disinterested.

That left the title to Nielsen.

But Nielsen may have won little more than a title. For instead of leaving decisions entirely to Nielsen and the caucus chairman, John Seymour of Anahiem, Republicans elected a "board of directors" to help develop policy. As a GOP power-broker, Richardson serves on that board along with senators Jim Ellis of San Diego and Ollie Speraw of Newport Beach. Also part of the "outfit," as Nielsen calls it, is Minority Whip John Doolittle of Citrus Heights, the only member of the old leadership to retain his post.

As an immediate example of Nielsen's shrinking power, the entire caucus — and not Nielsen — named Seymour as caucus chairman. Campbell had hand-picked Maddy, Seymour's predecessor. "He'll (Nielsen) be on a short leash," Davis said at the time. "Campbell was on a long leash, and that was the problem."

Not everyone, however, thinks Nielsen can function effectively while looking over his shoulder for approval. Says Maddy, "You cannot be a leader if you have to answer to a board of directors that pass judgment on every issue."

Nielsen, on the other hand, defends the arrangement. It will, he claims, distribute responsibility more widely. Also, although a majority of the directors and leaders must agree on policy, Nielsen insists that he is not controlled by Richardson or by anyone else. "I could not be viewed as beholden to anybody," he says.

At least one moderate Republican agrees. Says Senator Bill Craven of Oceanside, "He's smart enough to listen to what his directors say, but I think he will call the shots." Craven had supported Campbell.

A history of discord

Still, Nielsen inherits a Senate GOP that has a history of internal discord. Twelve years ago, Richardson led a revolt against the GOP Senate leader at that time — George Deukmejian. Richardson himself became caucus chairman in 1978, but Campbell, in the spark that ignited the current feud, dumped him in 1979 and made Maddy the caucus chief. And in 1982 Senator Ray Johnson, for years a stalwart Republican conservative, bolted the party in a tiff with Campbell over reapportionment. Since Johnson is a member of the influential Rules Committee, his departure cost Republicans one of their two seats on the five-member panel.

And then, there are the five moderate colleagues who supported Campbell (Campbell, Craven, Maddy, Milton Marks of San Francisco and Bob Beverly of Manhattan

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Rebecca LaVally, a Capitol correspondent for UPI, wrote "The Ray Johnson Thorn" for the June 1983 Journal.

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Seymour: "Life is too short to have to sell yourself."

By LARRY PETERSON

It has been five years since, quibbling over a trivial point, he loudly told a female colleague on the city council to "get a job!"

Since then, John Seymour, the boyish-looking state Senator from northern Orange County, has learned the finer arts of tact and negotiation. And they have served him well.

Last June, Seymour emerged as the GOP's number two man in the Senate behind Minority Leader Jim Nielsen of Woodland. The two men gained their positions following a coup that ousted the former minority leader, William Campbell of Hacienda Heights, and his deputy, caucus chairman Ken Maddy of Fresno. Although only a freshman lawmaker, the 45-year-old Seymour became his party's Senate caucus chairman.

As his leadership selection demonstrates, Seymour's successes, both in public and private life, tend to be sudden breakthroughs. He is living testimony to the definition of "luck" as "when preparation meets opportunity."

A native of Pittsburgh, Pennsylvania, who immigrated to California after a stint in the Marine Corps, Seymour earned a degree in real estate and finance from UCLA in January 1962. After more than two years with the real estate division of a bank, and with "a burning desire to make money," he formed his own real estate business — just in time to cash in on the Orange County real estate boom of the late 1960s and early 1970s. A workaholic, within eight years he was independently wealthy at the tender age of 34.

About that same time, Seymour also became active in the California Association of Realtors, eventually becoming its president in 1980. That moved him to the outer edge of politics. He was conservative with a philosophy toward government of "stay the hell out of my way and let me make money."

First foray

Nevertheless, when approached by a group of like-minded businessmen to serve on the Anaheim Planning Commission, Seymour accepted. A planning commission, he thought, was not really "politics" but a community service and not very different from a board of realtors.

Four years later, however, he plunged into real politics for good when elected to the city council. In 1978 he began the first of two terms as mayor of Anaheim. As he got closer to the political process, Seymour says he realized "how much government affects daily life, business and neighborhoods." He adds that he was able to observe the good as well as the failures of government in addressing problems. By 1980 he had decided that politics wasn't such a bad occupation after all. To this end, he sold his real estate business and made plans to seek a higher office.

Opportunity knocked unexpectedly. Late in 1981, when Republican state Senator John Briggs of Fullerton suddenly gave up what had been a safe GOP seat, Seymour raised a $200,000 war chest and announced plans to fill the vacancy. In an April 1982 special election, he swamped four opponents, garnering 70 percent of the vote.

At the time, Seymour's credentials as a law-and-order conservative were impeccable. As mayor, he led Anaheim's war on massage and bingo parlors. In 1978 he backed Briggs' ill-fated effort to win the GOP gubernatorial nomination. That same year, he supported a Briggs-sponsored initiative that would have made it easier for school boards to dismiss gay teachers.

But when he reached the Senate, those who expected another kooky right-winger from Orange County were soon disappointed. For Seymour has proven to be both a negotiator and an independent; as one Senate insider says, "a listener."

Conciliator

As caucus chairman, Seymour must undertake the normal duties of his post, such as fund raising to help fill his colleagues' campaign coffers. But he believes an additional role is to help bridge the gap between hard-line conservatives, led by Senator H. L. Richardson of Arcadia, and the party's more moderate wing as represented by Campbell and Maddy. To do this effectively, Seymour insists he must maintain his independence.

That independence was tested less than a week after Seymour joined the leadership, when conservatives tried to force him to support the aspirations of one of their own, Senator Ollie Speraw. Speraw, who lost his Long Beach political base in last year's reapportionment, had moved to nearby Newport Beach so as to run in the 37th state Senate District. But Seymour had already endorsed another Republican, Assemblywoman Marian Bergeson, for the GOP nomination in that district.

Conservatives called upon Seymour to abandon Bergeson; but he balked, causing a row that ended with his resignation as caucus chairman. To avoid a deepening crisis within the leadership, a deal was struck that allowed the Bergeson endorsement to stand if Seymour took no active role in her campaign.

Seymour's skills as a negotiator were also showcased this year when he staged a kind of shuttle diplomacy between the governor's office and Democratic lawmakers on behalf of an education-reform bill. A much-amended version of that bill eventually became law.

Democratic Senator Wadie Deddeh of Chula Vista, who

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Larry Peterson is political editor of the Santa Ana Register.

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has negotiated with Seymour on conference committees, describes him as pragmatic rather than ideological. Bergeson agrees. "He looks for solutions, not just debaters' points," she says.

But one Senate insider likens Seymour's negotiating ability to his career in real estate. "He's a typical real estate man," he says. "He wants to close the deal. His attitude is: You don't push people around, you sell them."

For his part, Seymour credits his experience in local government for forging this meld of conservatism and pragmatism. Says Seymour, "You have to be conservative to represent my district, but people who come into the Legislature out of local government don't make kamikaze runs."

A vote switcher

In keeping with this outlook, the Anaheim lawmaker spent the first 14 months in the Senate defending then-Minority Leader Campbell against the attacks of arch-conservative Richardson. He even voted for Campbell's retention this past June when the minority leader survived for a time on a 7-7 tie. On July 1st, however, Seymour switched sides, and Campbell went down.

Of his eventual switch, Seymour explains, "It was very clear after the vote that Bill (Campbell) was going to have to act quickly to patch up holes on a sinking ship. We tried to get him to show a little different style of leadership but, unfortunately, he didn't respond."

Regardless of this pragmatic bent, Seymour hasn't abandoned law-and-order issues. For instance, he authored a measure, signed into law this year, that denies licenses for child-care facilities to convicted sex offenders. And he is currently carrying a bill that would make it easier to deny bail to rape suspects. He is also pushing legislative efforts to close what he believes are court-created loopholes in Proposition 13.

But Seymour realizes that he has little chance of success if the GOP doesn't improve its numbers in the Senate. Currently, they are but 14 out of 40. He therefore considers his top priority the election of more Republicans. Although he won't elaborate, he says the GOP has targeted four Democratic senators for defeat come 1984. While not wresting control of the upper house, gaining at least two of those four seats would allow the GOP to prevent overrides of gubernatorial vetoes.

To achieve these goals, Seymour insists he will never give up his independence.

"Life is too short to have to sell yourself," he says. "I came up here without anyone's hooks in me and that's the way I plan to stay."

To this end, it may be significant that the Deukmejian administration, in pressing its recent local government bail-out scheme, chose Seymour — and not Nielsen — to carry its bill. As one senator says, assessing the new GOP leadership team, "Seymour has good political sense. He's gregarious. He has push." And, he concludes, Seymour — and not Minority Leader Nielsen — may be the man to watch.

NIELSEN *Continued from page 426*

Beach). Insiders say those five will remain a thorn for Nielsen because they are the ones most likely to supply crucial votes for Democrat-backed proposals opposed by the "board."

Maddy, however, insists the losers will remain team players. "We're not going to go out and do what Richardson has always done, which is rabble-rouse," he says. But he adds, "We're not enamoured of this new arrangement. We're not cohesive. But we were not before, either."

While working with disgruntled Republicans might prove a problem, Nielsen's main concern is his relationship with majority Democrats. And although Senate Pro Tem David Roberti of Hollywood has publicly expressed a willingness to work with Nielsen, no one expects them to be as friendly as were Roberti and Campbell. According to one GOP observer, Campbell's willingness to work with Roberti had made him and Maddy into "the Democrats' house Republicans."

An omen to possible friction between Roberti and Nielsen is the month it took for the Democrat-controlled Rules Committee to let Nielsen have the minority leader's plush office in the restored part of the Capitol. And for weeks after Campbell's ouster, there were disagreements over how big a staff Rules would allow his successor.

"He's (Nielsen) a polite, respectful person and he doesn't push himself out front," says Ed Davis. "But . . . he will take one slight or another, but there will be no third slight."

Says Nielsen, "It remains to be seen how well we (he and Roberti) work together."

An "est" alumnus

Generally regarded as honest and sincere, Nielsen is not considered overly assertive; "still water running deep," as one GOP colleague puts it. Not that he doesn't have a strong awareness of himself. Several years ago, for example, as a way to "understand oneself and deal with the challenges of life," Nielsen participated in two "est" weekends, those intense, self-searching retreats sponsored by Werner Erhard. And when complimented on the valuable, state-owned antiques in his new office, he replies that he is wary of "becoming enraptured with the trappings of power."

Politically, he is considered a moderate. Previously neutral in battles between Richardson and Campbell, he has devoted most of his energies to issues that affect his district — namely, water and agriculture. He has also shown a degree of flexibility as evidenced by his support for David Kennedy as the state's top water official. Kennedy was a vocal advocate for the Peripheral Canal, something Nielsen (and an overwhelming majority in his district) opposed. Nielsen also supported the Sebastiani reapportionment initiative even though it would have made his own reelection more difficult.

Nielsen's road to the minority leader's office began in 1978 when he upset former Senator John Dunlap, a liberal Democrat from Napa. For nearly five years he has represented a sprawling rural district, the Fourth, but the current reapportionment plan removes his Yolo County home from that district. Thus to return to the Senate when his term expires in 1986, Nielsen must either move or challenge incumbent Republican Senator John Doolittle in the Sixth District.

None of this seems to bother Nielsen, however. "I will run for reelection and I intend to be reelected. My challenge now is to be the best minority leader that the Senate ever had and to hopefully achieve a majority status. If I do the job at hand, anything is possible in the future."

A native of rural Fresno County, Nielsen earned a degree in agri-business from Fresno State University in 1967. Two years later, he began working for the Roy Riegels Chemical Company of Woodland, a firm that supplies fertilizers and pesticides to farmers. Even today, he is paid more than $10,000 per year as a retainer as agricultural consultant to the Riegels firm. Married for the second time in October 1982, Nielsen has two children from his first marriage and two step-children from his second. He is a former school board member and a former chairman of the Yolo County Republican State Central Committee.

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THE 1983 LEGISLATIVE SUMMARY

Highlights of bills from a two-phase session

By A. G. BLOCK

The 1983 legislative session can be divided into two unequal parts. The first and largest produced three massive and complex measures that were signed into law by Governor George Deukmejian: a $26 billion budget, a budget trailer bill and an education finance and reform package (see "The Budget," a special section in the September 1983 *Journal*). It also generated a great deal of public attention and highlighted basic philosophical differences between a new Republican governor and a veteran, Democrat-dominated Legislature.

The second phase received less publicity and ended, not with a bang, but with an unsolved funding crisis for the state's community colleges. Along the way, lawmakers passed — and the governor signed — major legislation affecting new prison construction, funding for local governments, restitution for crime victims, underground storage of chemicals and AIDS research. In all, the governor signed 1301 bills, allowed 26 to become law without his signature and vetoed 138. By contrast, former Governor Jerry Brown vetoed 148 bills in his rookie year of 1975.

These then are highlights of bills chaptered into law (signed by the governor or allowed to become law without his signature) or vetoed.

AGRICULTURE

Chaptered:

Oranges (SB 275, Vuich). Creates the California Navel Orange Commission. **Eggs** (AB 951, Kelley). Creates the California Egg Commission and levies assessments on handlers of eggs. **Dairy Farms** (SB 878, Ayala). Exempts the construction or modification of dairy farms and feedlots from environmental impact report requirements. **Pesticide Safety** (SB 102, Torres). Requires farm labor contractors to pass an examination relating to worker safety and the use of pesticides.

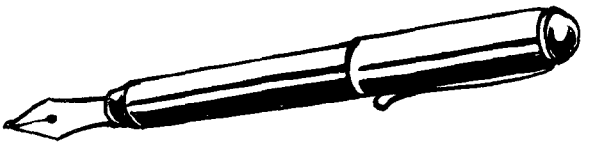
Vetoed:

Agricultural Lands (SB 1131, Hart). Established guidelines for the California Coastal Commission and local governments concerning agricultural land projects in the coastal zone.

BUSINESS

Chaptered:

Small Business (AB 13, Katz). Allows a small business to recover attorney's fees and litigation expenses against a state agency when it prevails in a regulatory action. **Supermarkets** (AB 179, Moore). Requires grocery stores to provide restroom facilities for their customers. **Automobile Sales** (SB 143, Foran). Permits automobile salespersons to assist buyers in securing third-party financing. **Insurance** (SB 960, Robbins). Provides that sex-based differentials in rates, dividends or benefits shall not be required for any life insurance policy or annuity. **Chiropractors** (SB 738, Torres). Permits chiropractors to conduct scoliosis screenings of school children. **Podiatrists** (AB 563, Moorhead). Expands the practice of podiatry to include the diagnosis and surgical treatment of the ankle and all of the tendons that insert into the foot. **Economic Impact** (SB 616, Nielsen). Requires public agencies to prepare an economic impact statement when proposing regulatory changes that result in direct costs to businesses or individuals. **Bank Deposits** (AB 1723, W. Brown). Prevents banks from holding deposits for unreasonable periods before customers can write checks against such deposits. **Poker Parlors** (AB 1573, Connelly). Requires gaming club owners to register with the state attorney general. **Telephone Service** (SB 244, B. Greene). Requires telephone companies to implement a dual-party relay service for the deaf and severely hearing-impaired persons.



Vetoed:

Contractors (SB 133, Stiern). Removed the Contractors' State License Board from the Department of Consumer Affairs and made it a separate entity. **Funeral Arrangements** (AB 145, Papan). Allowed the payment of sales commissions for pre-need funeral contracts out of the purchaser's funds.

CONSUMER AFFAIRS

Chaptered:

Counterfeit Products (AB 1565, Davis). Authorizes the seizure of counterfeit goods, such as imitation designer jeans, and imposes penalties on persons caught making or selling them. **Credit Cards** (SB 618, Beverly). Authorizes companies issuing credit cards to place a customer's account on inactive status if card has not been used for over 18 months. **Packaging** (SB 40, Torres). Adopts federal regulations for the tamper-resistant packaging of drugs and cosmetics. **Mail-Order Firms** (SB 325, Ellis). Imposes criminal penalties on mail-order houses for using addresses in their advertisements which are not their places of business. **Finance Charges** (AB 1858, Young). Extends for two years the existing 19.2 percent annual consumer credit finance charge on retail accounts. **Balloon Payments** (AB 1600, Hayden). Requires disclosure to prospective home mortgage buyers of all aspects of balloon payments.

CRIMINAL JUSTICE

Chaptered:

Marijuana (SB 94, Presley). Stiffens penalties for the possession of marijuana on school grounds. **Rape** (SB 635, McCorquodale). Extends the reporting time limit for spousal rape from 30 to 90 days. **Bad Checks** (AB 1226, Katz). Trebles penalties for writing bad checks in amounts between $100 and $500. **Theft** (AB 1293, Young). Allows an action for damages against an adult or emancipated minor who steals from a merchant or library facility. **Grocery Carts** (SB 497, Presley). Makes it illegal

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to steal a grocery cart. **Property Damage** (SB 561, Robbins). Allows court to award treble damages for the intentional and malicious destruction of real or personal property. **Parental Liability** (AB 846, Sher). Makes parents liable for the cost of supporting their children confined or placed in a juvenile facility. **Firearms** (AB 75, McAlister). Absolves gun manufacturers and sellers of liability after selling or furnishing a firearm used to cause injury or death. **Restitution** (AB 1485, Sher). Requires persons convicted of crimes to pay a basic restitution fine of one dollar for every $10 of fine imposed. **Prison Construction** (SB 422, Presley; AB 1841, Baker; AB 436, Sher). Authorizes the construction or expansion of state prison facilities to provide 11,000 new prison beds. **Church Vandalism** (AB 1890, Davis). Makes it a felony to vandalize a religious institution because of the race, color, religion or national origin of an individual or group. **Restitution** (AB 1087, Nolan). Imposes a restitution fine of $10 to $1000 in felony cases. **Victims** (AB 493, Robinson). Makes it easier for victims of crimes to sue convicted criminals for damages. **Product Tampering** (AB 33, Bane). Imposes felony penalties for placing harmful substances in pharmaceutical products.

Vetoed:

Body Searches (AB 270, M. Waters). Prohibited strip searches of persons arrested for infractions or misdemeanors except in cases of weapons or drug violations. **Police Training** (SB 382, Petris). Required police offices to pass a statewide proficiency examination as part of their training program.

EDUCATION

Chaptered:

Educational Reform (SB 813, Hart). Major school finance/educational reform measure designed to improve the quality of public schools, increase the level of school support and raise state tax revenues. **School Facility Use** (SB 1246, Speraw). Requires community colleges to offer the free use of their facilities to certain charitable and nonprofit organizations. **Weapons on Campus** (AB 1039, Alatorre). Prohibits the bringing of knives onto college campuses. **Board of Education** (AB 2166, Bane). Adds non-voting student member to the State Board of Education. **Campus Police** (AB 2108, Wright). Increases the authority of school police officers.

Vetoed:

Teacher Training (SB 583, Torres). Required that teachers and school administrators be trained in skills needed to instruct or supervise pupils from diverse cultural backgrounds. **School Facilities** (AB 1961, M. Waters). Required school districts to offer the free use of school facilities to non-profit charitable organizations. **Community Colleges** (AB 150, Campbell). Appropriated $108 million in additional funding for the support of community colleges. **California State University** (SB 1082, Robbins). Added the Senate pro tempore as an ex officio member of the CSU Board of Trustees.

EMPLOYMENT

Chaptered:

State Employees (AB 1210, Seastrand). Gives permanent state employees return rights to former civil service jobs under specified conditions. **Disability Insurance** (SB 1041, Lockyer). Increases the maximum state disability insurance benefit duration from 39 to 52 weeks. **Child Care Services** (AB 1162, Bates). Enacts the Child Care and Employment Act to provide child care services to participants in federal job training and placement programs. **Disability Benefits** (AB 518, Young). Provides for an increse in the maximum weekly benefit amount payable for unemployment disability benefits. **Female-Dominated Jobs** (AB 1580, Klehs). Requires cities and counties to consider the comparable value of work performed when negotiating salaries for female-dominated jobs.

Vetoed:

Employee Records (SB 985, McCorquodale). Allowed a county employee to inspect personnel records relating to job performance or grievances. **Lie Detector Tests** (AB 346, Floyd). Prohibited requiring public employees or job applicants to take polygraph tests as a condition of employment. **Teachers' Retirement** (SB 173, Deddeh). Allowed teachers to retire at age 50 with 25 years of service instead of 30 years of service. **Social Security** (AB 1060, Moore). Prohibited any public agency from withdrawing from the federal Social Security System. **Public Pensions** (AB 672, Papan). Made the State Teachers' Retirement System and the Public Employees' Retirement System independent of state agency regulation. **Wage Laws** (AB 1683, Molina). Made employer who violated wage laws liable to the employee affected for unpaid wages plus interest and liquidated damages. **Employment Services** (AB 1684, Molina). Required state to prepare and distribute material on labor laws and job services to non-English speaking persons. **Job Bias** (AB 524, Harris). Awarded attorney's fees and court costs to any state employee who prevailed in appealing a complaint of job discrimination. **Alcoholic Employees** (AB 433, Agnos). Required employers to reasonably accommodate any employee who wished to voluntarily participate in an alcoholic rehabilitation program.

ENVIRONMENT

Chaptered:

Radioactive Waste (SB 444, Keene). Requires state to determine the effects of radioactive waste dumping off the coast. **Acid Rain** (SB 55, Roberti). Requires the Air Resources Board to give priority to the research and monitoring of acid rain in the South Coast Air Basin. **Hazardous Waste** (AB 860, Konnyu; AB 1362, Sher; AB 1807, Tanner; AB 2013, Cortese; AB 1803, Connelly; AB 1832, Tanner). Expedites the clean-up of hazardous wastes, provides for the regulation of chemical storage and provides for the control of air contaminants. **Japanese Beetle** (SB 1283, Johnson). Appropriates $1,533,346 to pay for the costs of eradicating the Japanese Beetle.

Vetoed:

Energy Loans (AB 1315, Papan). Authorized funding to provide loans to small businesses for energy conservation measures. **Noise Abatement** (AB 537, Robinson). Restricted the filing of noise abatement suits against airports in small claims courts.

FAMILY LAW

Chaptered:

Paternity Cases (AB 510, Molina). Makes a person's failure to submit to a blood test admissible as evidence in a paternity proceeding. **Spouses** (SB 66, Davis). Permits a married person to testify against a spouse prosecuted for a criminal act committed prior to their marriage. **Community Property** (AB 26, McAlister). Expands legal presumption that a single-family residence acquired in joint tenancy during marriage is community property. **Domestic Violence** (AB 1148, Filante). Expands a court's authority to exclude a spouse from the family home. **Visitation Rights** (AB 300, Condit; AB 1550, Johnson). Allows court to grant visitation rights to a grandparent when the child's parents are divorced. **Adoption** (AB 2096, Campbell). Enacts procedures for disclosing the identities of birth parents to adopted children. **Child Stealing** (AB 109, Wyman). Increases penalties for removing a child from the state in order to deprive a parent of custody or visitation rights. **Military Benefits** (SB 1034, Petris). Authorizes the modification of community property settlements to include division of military retirement benefits as community property.

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HEALTH AND WELFARE

Chaptered:

Liver Transplants (SB 72, Carpenter). Extends Medi-Cal coverage to include liver transplants. **AIDS** (SB 910, Roberti). Provides for research, education and workshop grants to advance scientific knowledge about Acquired Immune Deficiency Syndrome. **Medi-Cal** (AB 1757, Connelly). Prohibits denial of care and services to a Medi-Cal patient due to the person's inability to make a co-payment. **Interpreters** (AB 885, Chacon). Requires hospitals and nursing homes to hire bilingual personnel and interpreters to facilitate communication with patients who do not speak English or are hearing impaired.

Vetoed:

Health and Welfare Programs (AB 1088, Isenberg). Created Commission on Reducing Health and Welfare Administrative Costs. **Geriatric Health** (AB 1924, Moorhead). Established a program to fund academic geriatric resource centers at the University of California. **Medi-Cal Coverage** (SB 263, Torres). Restored Medi-Cal coverage for medically indigent adults receiving day health services. **DMSO** (SB 268, Watson). Authorized broader prescribing and dispensing of DMSO. **Welfare Reform** (AB 789, Bates). Strengthened enforcement of child-support collections for welfare families and provided for the placement of welfare recipients in partially subsidized jobs with private employers. **Agent Orange** (AB 1805, Hayden). Created the Agent Orange Review Commission. **Hazardous Waste** (SB 1036, Torres). Made it easier for persons exposed to hazardous waste to receive compensation for injuries. **Clinics** (AB 719, Peace). Permitted community and free clinics to purchase drugs and medical devices for dispensing to clinic patients.

HOUSING

Chaptered:

Renters (AB 637, M. Waters). Gives renters up to 30 days to move after their rental unit is sold. **Veterans** (SB 75, Craven). Increases from $55,000 to $75,000 the amount of a Cal-Vet loan available to veterans at eight percent interest. **Housing Discrimination** (SB 184, Marks). Permits the San Francisco Board of Supervisors to prohibit discrimination on the basis of a person's sexual orientation in the rental, lease or sale of redevelopment agency property.

TAXATION

Chaptered:

Gasohol (SB 1030, Boatwright). Extends until January 1987 the sales tax exemption for gasohol. **Property Tax Refunds** (AB 15x, O'Connell). Provides for the refunding of property taxes should the courts uphold the annual two percent inflationary provisions of Proposition 13. **Automobiles** (SB 1260, Robbins). Provides an income tax credit for buying a motor vehicle manufactured or assembled and sold in California. **Olympics** (AB 349, Costa). Allows taxpayers to designate any excess income tax liability for support of the U.S. Olympic Committee Fund. **Solar Energy** (SB 298, Hart). Reduces solar energy tax credit for builders and makes other changes in the credit for taxpayers. **Telephone Services** (AB 1348, Moore). Establishes universal (lifeline) telephone service and imposes a tax on intrastate, long-distance service. **Energy Credits** (AB 2158, Hayden). Extends the tax credit for certain energy conservation measures. **Children's Services** (AB 607, Vicencia). Allows taxpayers to designate a portion of their income tax liability for the support of various children's services. **Senior Services** (AB 50, Agnos). Allows the same designation for various programs for the elderly.

Vetoed:

Tax Deductions (AB 234, Farr). Continued tax deductions for artists who donated their work to charitable organizations or public agencies. **Diabetes** (SB877, Mello). Exempted reagents and testing equipment necessary in the treatment of diabetes from sales and use taxes. **High Technology** (AB 1839, Baker). Provided special tax credit to the high technology industry to encourage the training of math and science teachers.

TRANSPORTATION

Chaptered:

Car Registration (SB 581, Johnson). Imposes misdemeanor penalties if California residents register cars in other states. **Financial Responsibility** (SB 808, Mello). Suspends driver's license for one year for driver who fails to establish financial responsibility in a reportable accident. **Metro Rail** (SB 1238, Watson). Authorizes Southern California Rapid Transit District to establish special benefit assessment to finance the "Metro Rail" project in Los Angeles. **BART** (AB 2085, Harris). Authorizes San Francisco Bay Area Rapid Transit District to establish affirmative action programs in non-federally funded contracts. **Speeding** (AB 370, Wright). Imposes one year mandatory driver's license suspension and fine up to $500 for driving over 100 miles per hour. **Drunk Driving** (AB 624, Moorhead). Mandates revocation of the driver's license of a minor convicted of drunk driving.

Vetoed:

Weight Violations (SB 689, Foran). Tightened penalties for weight and permit violations for loads, vehicles and vehicle combinations. **Auto Manufacturing** (SB 1261, Robbins). Granted a bid advantage for state contracts to automotive manufacturing businesses located within the state.

MISCELLANEOUS

Chaptered:

State Officials' Pay Raise (AB 2187, Papan). Increases the annual salaries of state legislators and state constitutional officers. **Charitable Solicitations** (SB 292, Deddeh). Requires organizations soliciting for charitable purposes to disclose their membership. **Name Changes** (SB 1269, Petris). Simplifies the procedure for changing one's name. **Physically Disabled** (SB 902, Watson). Requires owners of theatres, stadiums and other places of entertainment to provide seating for physically handicapped persons. **State Finance** (SB 156, Robbins). Pays back $21.5 million to the Off-Highway Vehicle Fund borrowed by the state to prevent fiscal insolvency earlier in the year. **State Budget** (SB 123, Alquist). Appropriates $26 billion for the support of state government for fiscal 1983-1984. **Budget Implementation** (AB 223, Vasconcellos). The so-called "trailer bill."

Vetoed:

Smoking (AB 919, Bates). Made state buildings subject to local ordinances regulating smoking. **State Buildings** (SB 82, Garamendi). Required one percent of the funds budgeted to building construction to be used to acquire works of art. **State Capitol** (AB 1722, W. Brown). Created the Historic State Capitol Commission to review planning and development within the Capitol complex. **Jury Rooms** (AB 1990, Connelly). Prohibited smoking in jury deliberation rooms. **Dogs and Cats** (AB 2024, O'Connell). Prohibited the killing of a dog or cat with nitrogen gas. **State Agency Directors** (AB 2098, Condit). Changed the titles of the state directors of Food and Agriculture and Industrial Relations to secretaries of Food and Agriculture and Industrial Relations. **Government Reorganization** (AB 1437, Katz). Required governor to submit to the Legislature during his first year in office a reorganization plan proposing a cabinet-level structure for the executive branch. **Human Relations Commissions** (AB 185, Moore). Expanded responsibilities of county human relations commissions to include investigation of community group tensions.

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Premature publicity dries up what might have been a good year

By DAN WALTERS

The developers of two large-scale housing projects in Southern California made it. But overall, 1983 was not a good year for "juice bills" in the Legislature; that is, measures to help land developers and other special interests. (See "Juice Bills," *CJ*, August 1983). What one lobbyist called "premature publicity" killed several bills while political problems plagued others.

The year's major special interest winners were Presenting, Incorporated, a San Diego development company that includes prominent Democrats, including members of former Governor Jerry Brown's administration, and Campeau Corporation, a Canadian company. Presenting wants to develop 2000 acres in rural San Diego County into something called "Honey Springs Ranch." Local property owners and environmental groups objected and filed suit alleging that county officials had improperly allowed the developers to remove the land from a Williamson Act land-preservation contract.

Brownies

Faced with the prospect of a protracted court battle, Presenting appealed to the Legislature. The firm hired two former lobbyists for the Brown administration who have moved into the private sector — James Neff and Terri Thomas — and persuaded Democratic Assemblyman Richard Robinson of Santa Ana to introduce a bill that, in effect, voided the anti-Honey Springs lawsuit. After a heavy lobbying campaign, the bill made it through the Legislature and onto Governor Deukmejian's desk. Some of the governor's political advisers recommended a veto, saying it was a rare opportunity to ding the Democrats and score points with the Sierra Club. But Deukmejian allowed the bill to become law.

Campeau had a similar problem with its 1700-acre Lakeridge Estates project near Riverside. City officials and environmentalists challenged the validity of the county's general plan under which the development was proceeding. Campeau tried in 1982 to secure passage of a validating law and failed. It returned in 1983, won passage of a bill carried by Democratic Assemblyman Jim Costa of Fresno, and then secured a signature from Deukmejian.

The year's most notable special-interest loser was developer Richard Traweek, whose plan to convert 720 San Francisco apartment units into condominiums ran afoul of that city's strict condo-conversion limit. Democratic Senator Henry Mello of Watsonville introduced a bill for Traweek — a major campaign contributor — to overturn the local limit. But the measure stalled in the Assembly after San Francisco's news media and others picked up the story.

San Mateo Times publisher J. Hart Clinton tried to overturn what he regarded as an unjust decision by Santa Cruz County officials to keep an 80-acre parcel of mountainland he owned in a forest preservation zone. Democratic Assemblyman Lou Papan of Millbrae, who represents San Mateo County, introduced a bill for Clinton, but Mello — under pressure from environmentalists for his role in the Traweek affair — made killing the Papan bill a personal crusade. And as a member of the Senate Rules Committee, Mello was able to arrange a funeral.

Environmentalists and developers battled to a draw over plans to convert the Bolsa Chica wetlands in Orange County into homes and commercial structures. The Signal Landmark Company sought legislation to validate the development in the face of environmental group opposition. Several bills sponsored by Signal were introduced but ultimately, the contending factions cancelled each other out and the only legislation to be enacted calls for a habitat conservation plan to be prepared for Bolsa Chica.

Other major winners and losers on the special interest front:

— Union Oil won when Deukmejian signed legislation giving it a break on rates for natural gas used to produce ammonia fertilizer. Natural gas rates to other non-residential customers throughout the state will be raised to subsidize the ammonia plant.

— The California Trucking Association, the Teamsters Union and the insurance industry formed a coalition to push legislation that would require independent truckers to buy workers' compensation insurance. But the legislation stalled in the Senate Industrial Relations Committee. Efforts to revive the proposal by placing it before a conference committee late in the session ran headlong into reform rules aimed at preventing that sort of use of conference committees.

— Searle Optical mounted a campaign to pass legislation that would allow it to establish a chain of franchised optical centers and the California Optometric Association waded in with an opposition lobbying drive. The bill didn't make it.

— The horse racing industry got behind legislation to legalize two forms of off-track wagering — seeing the possibility of $2 billion in additional business each year. But the bill, after moving through the Assembly, was left sitting on the Senate floor because of stiff opposition from law enforcement groups and Governor Deukmejian.

— The California Podiatrists Association pumped more than $100,000 into the campaign coffers of key legislators in a few months and won passage of legislation that would allow foot doctors to expand their practices to include the ankle. Deukmejian allowed the bill, opposed by the powerful California Medical Association, to become law without his signature.

— Large funeral homes thought they had scored a win over small funeral homes and consumer groups when they secured legislative approval of a Papan bill that would have allowed them to mass-market pre-need funeral plans and pay sales commissions out of the proceeds. Deukmejian, however, vetoed the bill, saying he feared the elderly would become victims of high-pressure sales crews.

Dan Walters is Capitol bureau chief for the Sacramento Union.

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JUDGES

Continued from page 424

removed from office."

Stolz sees the lesson as the need of the court to reestablish its legitimacy in the eyes of the public as the third branch of government. "Americans have come over the years to believe deeply that judges have a useful if limited roll in their governments. The key word is 'limited'. . .

"If the court has no program beyond fair process, and if its fundamental principle is to do its best to understand, articulate and promote the policy preferences of others, then judicial power should endure despite the ambiguities inherent in the justices' high office."

There is also a simpler lesson. When Governor Reagan chose Clark and Governor Brown chose Bird, their intention was to leave their own mark on the court rather than to insure that the court would do a good job in performing its constitutional task. The events reported by these books have shown that the court is more fragile than either governor thought when he made his appointment.

Next February, Justice Richardson of the California Supreme Court reaches the age of 70, and the judicial retirement system provides a strong financial incentive for judges to retire before their 70th birthday. If Justice Richardson steps down, Governor Deukmejian will have his first Supreme Court appointment, and that choice should tell something of how he balances politics with the needs of the institution.

MEDICAL

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the Department of Health Services, predicted that there would be no problems getting one from the Reagan administration.

So why hasn't the new proposal become law?

The problem is essentially one of partisan politics and ideology. Generally speaking, Democrats in the Legislature want the new contracting program to be controlled by the Medical Assistance Commission, the agency created by last year's reform law. Its seven voting members were appointed by Jerry Brown (three) and the Legislature's Democratic leaders (four). Governor George Deukmejian, on the other hand, wants the new program controlled by his administration, essentially by giving it to the State Department of Health Services.

Commission chairman Richard A. Silberman, Brown's former director of finance, refused to say that the Deukmejian administration would develop a contracting program that deliberately stinted on care. However, he says that an administration bent on cutting costs would be more likely to choose alternatives that promise more economy than service. For instance, he says, whoever does the contracting will set standards covering such issues as the availability of care. "If you say that nobody can be more than an hour and a half away from a doctor, that's one cost. If you say 10 minutes, the cost is much higher," he explains.

The person handling negotiations for the administration is Ronald Kaldor. He agreed that the proposed law would contain only broad provisions and that important details covering such matters as the availability of care would be made by the contracting agency. However, he denied that the administration would be harsh. "It is the intention of this administration to provide reasonable access (to care)," he declared.

Kaldor noted that the proposed contracting program would cover some 83 percent of the state's 2.8 million Medi-Cal recipients and that it would be "questionable public policy" to put such a big and expensive program into the hands of a commission that is not answerable to the governor. But Silberman looks upon the commission's independence as a plus. The broad background of its membership will bring necessary dimension to policy arguments, he says.

At the moment, it's impossible to say what kind of compromise may emerge. However, observers are predicting that the conflict will be settled after lawmakers return to the Capitol in January.

the BALLOT FRONT

A roundup of statewide initiative proposals. (Signatures required and deadlines are in parentheses.)

New in circulation:

- **BALANCED FEDERAL BUDGET** — an initiative statute, identical to one that failed to qualify in September, that requires the Legislature to send Congress a resolution calling for a constitutional amendment to balance the federal budget. (393,835, February 21, 1984)

Continuing in circulation:

- **MAXIMUM SALARIES FOR STATE OFFICIALS** — a constitutional amendment to limit salaries paid to elected officials and justices of the state Supreme Court. (630,136, November 21st)
- **WELFARE** — an initiative statute that requires welfare recipients to work as a condition of relief. (393,835, December 19th)
- **GAMBLING AND LOTTERIES** — an initiative constitutional amendment that would authorize lotteries and legalized gambling in selective locales, and create a Public Gaming Control Commission. (630,136, December 19th)
- **NUCLEAR WEAPONS** — an initiative statute that requires the governor to write to the president to urge United Nations control over all nuclear weapons. (393,835, December 19th)
- **ELECTION CAMPAIGNS** — an initiative statute that attempts to clean up political campaigns. (393,835, December 19th)
- **FIRE SAFETY** — an initiative statute that requires the state fire marshal to establish fire safety standards for cigarettes and small cigars. (393,835, December 23rd)
- **SOUTH AFRICA** — an initiative statute that forces all California state, county and municipal agencies to divest themselves of investments in South Africa. (393,835, December 29th)
- **TAXATION** — a constitutional amendment, sponsored by Howard Jarvis, that amends Proposition 13 to close loopholes Jarvis claims have been opened by the courts. (630,136, January 2, 1984)
- **CRIMINAL COURT REFORM** — an initiative constitutional amendment affecting, among other things, the selection of juries and the number of jurors able to convict in criminal cases not involving the death penalty. (630,136, February 17, 1984)

Signatures submitted:

- **LEGISLATIVE RULES, PROCEDURES, POWERS AND FUNDING** — an initiative statute sponsored by Paul Gann to cut the Legislature's own budget and give more power to the minority party. Signatures submitted October 7th, but not yet verified. (393,835)

Failed to qualify:

- **MARIJUANA-HEMP** — an initiative statute (the 13th) to legalize personal use of marijuana for persons 18 or older.
- **UTILITY RATES** — a constitutional amendment to require increased lifeline allowances and redesigned rate structures.
- **SPACE STATION** — an initiative statute seeking establishment of a space station.

Source: Secretary of State March Fong Eu.

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Perspective from WASHINGTON

By Leo Rennert

Liberal-in-waiting

The next four months promise to test Alan Cranston's mettle as a long-distance runner in the race for the Democratic presidential nomination. California's senior senator emerged from this year's preliminary tests with a mixed bag of results. He did better than most pundits had predicted. But he still has not established himself as a front-line contender. At this stage, it's a two-way contest between former Vice President Walter Mondale and Ohio Senator John Glenn — with Cranston back in third position looking for daylight.

THE CALIFORNIAN'S BASIC DILEMMA hasn't changed since he decided to test the presidential waters nearly two years ago. It was not apparent then — nor is it now — that there's a well-defined national constituency for his candidacy. Little known outside of California, Cranston still faces the herculean task of creating an army of devoted followers. To be sure, his strong credentials on nuclear disarmament have enabled him to build a cadre of highly committed supporters. But this is a relatively small nucleus and the question remains whether his campaign can blossom into a full-fledged political crusade.

From the outset, Cranston was odd-man-out in the Democratic field — a puzzling intruder with little charisma who defied conventional wisdom and started elbowing his way forward in a crowd of younger and better-known rivals. Last year, his main problem was Senator Edward Kennedy, who barred Cranston's efforts to position himself as the logical standard-bearer for the party's liberal wing. When Kennedy dropped out, Mondale stepped in and continued to block the way. On the stump, Cranston tells Democratic voters that he's cultivating genuine grassroots support and suggests that Mondale merely hobbles along on the endorsements of party regulars, establishment figures and special interests. But Cranston's own strategists readily admit that he and Mondale are competing for essentially the same constitutency — the liberal and moderate segments of the party. In fact, Cranston's strategy for the 1984 nomination has boiled down to a simple proposition. By the end of the March caucuses and primaries, he must knock out Mondale and then go head-to-head with Glenn for the big prize.

In the inner councils of the Cranston campaign there is no other workable scenario. A few veteran aides cling to the notion that no candidate will arrive in San Francisco with an absolute majority of delegates and Cranston could end up on top in a brokered convention. But that's not the view of campaign manager Sergio Bendixen or the professionals who are directing the Cranston campaign. They tend to agree that the Democrats' new delegate-selection rules, which compress primaries and caucuses into a shorter time-frame, and the prodigious money-raising problems of longshots will narrow the field to a couple of contenders by April 1st. "One of the two progressives in the race — Mondale or Cranston — has to emerge by the end of March," said one Cranston campaign official. "At that point, one or the other will be sufficiently weakened that he won't be able to go on."

So far, of course, Mondale has shown no sign of faltering. Early last month he completed a triple sweep by picking up the endorsements of the AFL-CIO and the National Education Association while beating Cranston, 51 to 29 percent, in a straw vote at the Maine Democratic State Convention. The Cranston camp, however, believes it still has ample reserve strength to chip away at Mondale's lead. Cranston's organizing ability in some of the early states has won grudging respect from his opponents. His third-quarter financial report showed that his contributions are going up. So far, he has raised more than $2 million — a sum topped only by Mondale and Glenn. In the scramble for straw-poll victories at party gatherings, he beat Mondale in California and Wisconsin, while placing second in Massachusetts, Maine and Iowa. Cranston may be overstating his success a bit when he claims that it's now a three-way contest. On the other hand, he certainly has more to show for his efforts than a couple of other senators — Colorado's Gary Hart or South Carolina's Ernest Hollings.

In assessing Glenn's strength, the Cranston forces remain unimpressed. They see him as the astronaut-hero who profits from solid name recognition and from early polls showing that he might be the most formidable Democratic opponent to Ronald Reagan. But they also view Glenn as basically out of sync with mainstream party positions — a closet hawk who infuriates nuclear-freeze activists, an unreliable friend of Israel, a candidate distrusted by labor leaders and women's rights advocates. If it came to a Glenn-Cranston shootout, they think there's little doubt about the ultimate verdict.

BUT BEFORE THAT CAN HAPPEN, there still remains the Mondale problem. Until the first delegates are picked in Iowa and New Hampshire in the early going next year, Cranston strategists see few opportunities for a dramatic breakthrough. Mondale, of course, may commit some colossal blunder; but Cranston isn't counting on that. "Between now and the February caucuses in Iowa, nothing will depose Mondale as the front-runner," says a Cranston aide. "The only thing we can do is to position ourselves within striking distance." That means more intensive organizing efforts in some of the critically important early states. Cranston television spots are due to be aired this month in Iowa and New Hampshire to increase his visibility and to test his appeal.

In the meantime, Cranston is keeping communication lines open to party and labor leaders who have jumped on Mondale's bandwagon. Unlike Glenn, who made a futile move to sidetrack the AFL-CIO's endorsement of Mondale, Cranston graciously pulled out of contention, hoping organized labor would remember him as a reliable friend if the political winds change. Unlike Jerry Brown, who became a laughingstock during his quixotic run for the 1980 nomination, Cranston is maneuvering with a greater sense of realism. He already has shown surprising strength, enthusiasm and resilience. But he also knows that a presidential run is a fickle business. Right now, the $64 question is whether he can shed his role as liberal-in-waiting and push his way to the front of the pack.

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